Proposed Amendments to the

Rules of Civil Procedure
Rules of Court-Annexed Alternative Dispute Resolution
Rules of Criminal Procedure
Rules of Appellate Procedure
Rule of Juvenile Procedure
Utah Code of Judicial Administration

These rules are published for comment.
The comment period ends **June 11, 2002.**

Submit written comments to:
Alicia Davis
Staff Attorney
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: (801) 578-3843
E-mail: aliciad@email.utcourts.gov

Table of Contents

** Amendment approved effective October 22, 2001 pursuant to Rule 2-205.*

Utah Rules of Civil Procedure

Rule 4. Process.

(a) Signing of summons. The summons shall be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and served.

(b) Time of service. In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative. In any action brought against two or more defendants on which service has been obtained upon one of them within the 120 days or such longer period as may be allowed by the court, the other or others may be served or appear at any time prior to trial.

(c) Contents of summons.

(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Method of Service. Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(1) Personal service. The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

(B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and the complaint to the infant and also to the infant's father, mother or

guardian or, if none can be found within the state, then to any person having the care and control of the infant, or with whom the infant resides, or in whose service the infant is employed;

(C) Upon an individual judicially declared to be of unsound mind or incapable of conducting the person's own affairs, by delivering a copy of the summons and the complaint to the person and to the person's legal representative if one has been appointed and in the absence of such representative, to the individual, if any, who has care, custody or control of the person;

(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and the complaint to the person who has the care, custody, or control of the individual to be served, or to that person's designee or to the guardian or conservator of the individual to be served if one has been appointed, who shall, in any case, promptly deliver the process to the individual served;

(E) Upon any corporation not herein otherwise provided for, upon a partnership or upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy of the summons and the complaint to the defendant. If no such officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, an office or place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of such office or place of business;

(F) Upon an incorporated city or town, by delivering a copy of the summons and the complaint to the recorder;

(G) Upon a county, by delivering a copy of the summons and the complaint to the county clerk of such county;

(H) Upon a school district or board of education, by delivering a copy of the summons and the complaint to the superintendent or business administrator of the board;

(I) Upon an irrigation or drainage district, by delivering a copy of the summons and the complaint to the president or secretary of its board;

(J) Upon the state of Utah, in such cases as by law are authorized to be brought against the state, by delivering a copy of the summons and the complaint to the attorney general and any other person or agency required by statute to be served; and

(K) Upon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit, by delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary.

(2) Service by mail or commercial courier service.

(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial

district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(3) Service in a foreign country. Service in a foreign country shall be made as follows:

~~(A) In the manner prescribed by the law of the foreign country for service in an action in any of its courts of general jurisdiction; or~~

~~(B) Upon an individual, by personal delivery; and upon a corporation, partnership or association, by delivering a copy of the summons and the complaint to an officer or a managing general agent; provided that such service be made by a person who is not a party to the action, not a party's attorney, and is not less than 18 years of age, or who is designated by order of the court or by the foreign court; or~~

~~(C) By any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served as ordered by the court.~~

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint or by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(C) by other means not prohibited by international agreement as may be directed by the court.

(4) Other service.

(A) Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

(B) If the motion is granted, the court shall order service of process by publication or by other means, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service

shall be deemed complete. A copy of the court's order shall be served upon the defendant with the process specified by the court.

(C) In any proceeding where summons is required to be published, the court shall, upon the request of the party applying for publication, designate the newspaper in which publication shall be made. The newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made and shall be published in the English language.

(e) Proof of Service.

(1) If service is not waived, the person effecting service shall file proof with the court. The proof of service must state the date, place, and manner of service. Proof of service made pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent authorized by appointment or by law to receive service of process. If service is made by a person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.

(2) Proof of service in a foreign country shall be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court. When service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(3) Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(f) Waiver of Service; Payment of Costs for Refusing to Waive.

(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive service of a summons. The request shall be mailed or delivered to the person upon whom service is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the defendant at least 20 days from the date on which the request is sent to return the waiver, or 30 days if addressed to a defendant outside of the United States, and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the Appendix of Forms attached to these rules.

(2) A defendant who timely returns a waiver is not required to respond to the complaint until 45 days after the date on which the request for waiver of service was mailed or delivered to the defendant, or 60 days after that date if addressed to a defendant outside of the United States.

(3) A defendant who waives service of a summons does not thereby waive any objection to venue or to the jurisdiction of the court over the defendant.

(4) If a defendant refuses a request for waiver of service submitted in accordance with this rule, the court shall impose upon the defendant the costs subsequently incurred in effecting service.

Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required.

(1) Except as otherwise provided in these rules or as otherwise directed by the court, every judgment, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery, every written motion other than one which may be heard ex parte, and every written notice,

appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties.
(2) No service need be made on parties in default ~~for failure to appear~~ except ~~as provided in Rule 55(a)(2)(default proceedings). Pleadings~~ that:
(A) a party in default shall be served as ordered by the court;
(B) a party in default for any reason other than for failure to appear shall be served with all pleadings and papers;
(C) a party in default for any reason shall be served with notice of any hearing necessary to determine the amount of damages to be entered against the defaulting party;
(D) a party in default for any reason shall be served with notice of entry of judgment under Rule 58A(d); and
(E) pleadings asserting new or additional claims for relief against a party in default for any reason shall be served in the manner provided for service of summons in Rule 4.
(3) In an action begun by seizure of property, whether through arrest, attachment, garnishment or similar process, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.
(b) Service: How made and by whom.
(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court.
(A) Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the person=s office with a clerk or person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person=s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or, if consented to in writing by the person to be served, delivering a copy by electronic or other means.
(B) Service by mail is complete upon mailing. If the paper served is notice of a hearing and if the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or other method of actual notice. Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.
(2) Unless otherwise directed by the court:
(A) an order signed by the court and required by its terms to be served or a judgment signed by the court shall be served by the party preparing it;
(B) every other pleading or paper required by this rule to be served shall be served by the party preparing it; and
(C) an order or judgment prepared by the court shall be served by the court.
(c) Service: Numerous defendants. In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an

avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. ~~Except where rules of judicial administration prohibit the filing of discovery requests and responses, all~~ All papers after the complaint required to be served upon a party shall be filed with the court either before or within a reasonable time after service, except that filing depositions and discovery requests and responses are governed by Rule 26(i). The papers shall be accompanied by a certificate of service showing the date and manner of service completed by the person effecting service.

(e) Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may accept the papers, note thereon the filing date and forthwith transmit them to the office of the clerk

Rule 10. Form of pleadings and other papers.

(a) Caption; names of parties; other necessary information. All pleadings and other papers filed with the court shall contain a caption setting forth the name of the court, the title of the action, the file number, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned. In the complaint, the title of the action shall include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known shall be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties shall be designated as "all unknown persons who claim any interest in the subject matter of the action." Every pleading and other paper filed with the court shall also state the name, address, telephone number and bar number of any attorney representing the party filing the paper, which information shall appear in the top left-hand corner of the first page. Every pleading shall state the name and address of the party for whom it is filed; this information shall appear in the lower left-hand corner of the last page of the pleading. The plaintiff shall file together with the complaint a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council.

(b) Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading, or in any motion. An exhibit to a pleading is a part thereof for all purposes.

(d) Paper quality, size, style and printing. All pleadings and other papers filed with the court, except printed documents or other exhibits, shall be typewritten, printed or photocopied in black type on good, white, unglazed paper of letter size (8 **2** " x 11"), with a top margin of not less than 2 inches above any typed material, a left-hand margin of not less than 1 inch, a right-hand margin of not less than one-half inch, and a bottom margin

of not less than one-half inch. All typing or printing shall be clearly legible, shall be double-spaced, except for matters customarily single-spaced or indented, and shall not be smaller than ~~pica~~ 12-point size. Typing or printing shall appear on one side of the page only.

(e) Signature line. Names shall be typed or printed under all signature lines, and all signatures shall be made in permanent black or blue ink.

(f) Enforcement by clerk; waiver for pro se parties. The clerk of the court shall examine all pleadings and other papers filed with the court. If they are not prepared in conformity with this rule, the clerk shall accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

(g) Replacing lost pleadings or papers. If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

Rule 26. General provisions governing discovery.

(a) Required disclosures; Discovery methods.

(1) Initial disclosures. Except in cases exempt under subdivision (a)(2) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all discoverable documents, data compilations, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the case or to indemnify or reimburse for payments made to satisfy the judgment.

Unless otherwise stipulated by the parties or ordered by the court, the disclosures required by subdivision (a)(1) shall be made within 14 days after the meeting of the parties under subdivision (f). Unless otherwise stipulated by the parties or ordered by the court, a party joined after the meeting of the parties shall make these disclosures within 30 days after being served. A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

(2) Exemptions. (A) The requirements of subdivision (a)(1) and subdivision (f) do not apply to actions:

(i) based on contract in which the amount demanded in the pleadings is $20,000 or less;

(ii) for judicial review of adjudicative proceedings or rule making proceedings of an administrative agency;
(iii) governed by Rule 65B or Rule 65C;
(iv) to enforce an arbitration award;
(v) for water rights general adjudication under Title 73, Chapter 4; and
(vi) in which any party not admitted to the practice law in Utah is not represented by counsel.
(B) In an exempt action, the matters subject to disclosure under subpart (a)(1) are subject to discovery under subpart (b).
(3) Disclosure of expert testimony.
(A) A party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Utah Rules of Evidence.
(B) Unless otherwise stipulated by the parties or ordered by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
(C) Unless otherwise stipulated by the parties or ordered by the court, the disclosures required by subdivision (a)(3) shall be made within 30 days after the expiration of fact discovery as provided by subdivision (d) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (3)(B), within 60 days after the disclosure made by the other party.
(4) Pretrial disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment:
(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;
(B) the designation of witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and
(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.
Unless otherwise stipulated by the parties or ordered by the court, the disclosures required by subdivision (a)(4) shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the

Utah Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.
(5) Form of disclosures. Unless otherwise stipulated by the parties or ordered by the court, all disclosures under paragraphs (1), (3) and (4) shall be made in writing, signed and served.
(6) Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.
(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:
(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
(2) Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (a)(6) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Subdivision (c).
(3) Trial preparation: Materials. Subject to the provisions of Subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party’s attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.
A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A)

a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.
(4) Trial preparation: Experts.
(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report is required under subdivision (a)(3)(B), any deposition shall be conducted within 60 days after the report is provided.
(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.
(C) Unless manifest injustice would result,
(i) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under Subdivision (b)(4) of this rule; and
(ii) With respect to discovery obtained under Subdivision (b)(4)(A) of this rule the court may require, and with respect to discovery obtained under Subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.
(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.
(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
(1) that the discovery not be had;
(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;
(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.
If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.
(d) Sequence and timing of discovery. Except for cases exempt under subdivision (a)(2), except as authorized under these rules, or unless otherwise stipulated by the parties or ordered by the court, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision (f). Unless otherwise stipulated by the parties or ordered by the court, fact discovery shall be completed within 240 days after the first answer is filed. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.
(e) Supplementation of responses. A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:
(1) A party is under a duty to supplement at appropriate intervals disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(3)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert.
(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.
(f) Discovery and scheduling conference.
The following applies to all cases not exempt under subdivision (a)(2), except as otherwise stipulated or directed by order.
(1) The parties shall, as soon as practicable after commencement of the action, meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by subdivision (a)(1), and to develop a stipulated discovery plan. Plaintiff’s counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the discovery plan.
(2) The plan shall include:

(A) what changes should be made in the timing, form, or requirement for disclosures under subdivision (a), including a statement as to when disclosures under subdivision (a)(1) were made or will be made;
(B) the subjects on which discovery may be needed, when discovery should be completed, whether discovery should be conducted in phases and whether discovery should be limited to particular issues;
(C) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and
(D) any other orders that should be entered by the court.
(3) Plaintiff=s counsel shall submit to the court within 14 days after the meeting and in any event no more than 60 days after the first answer is filed a proposed form of order in conformity with the parties= stipulated discovery plan. The proposed form of order shall also include each of the subjects listed in Rule 16(b)(1)-(6), except that the date or dates for pretrial conferences, final pretrial conference and trial shall be scheduled with the court or may be deferred until the close of discovery. If the parties are unable to agree to the terms of a discovery plan or any part thereof, the plaintiff shall and any party may move the court for entry of a discovery order on any topic on which the parties are unable to agree. Unless otherwise ordered by the court, the presumptions established by these rules shall govern any subject not included within the parties= stipulated discovery plan.
(4) Any party may request a scheduling and management conference or order under Rule 16(b).
(5) A party joined after the meeting of the parties is bound by the stipulated discovery plan and discovery order, unless the court orders on stipulation or motion a modification of the discovery plan and order. The stipulation or motion shall be filed within a reasonable time after joinder.
(g) Signing of discovery requests, responses, and objections. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person=s knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.
If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

(h) Deposition where action pending in another state. Any party to an action or proceeding in another state may take the deposition of any person within this state, in the same manner and subject to the same conditions and limitations as if such action or proceeding were pending in this state, provided that in order to obtain a subpoena the notice of the taking of such deposition shall be filed with the clerk of the court of the county in which the person whose deposition is to be taken resides or is to be served, and provided further that all matters arising during the taking of such deposition which by the rules are required to be submitted to the court shall be submitted to the court in the county where the deposition is being taken.

(i) Filing.

(1) Unless otherwise ordered by the court, a party shall not file disclosures or requests for discovery with the court, but shall file only the original certificate of service stating that the disclosures or requests for discovery have been served on the other parties and the date of service. Unless otherwise ordered by the court, a party shall not file a response to a request for discovery with the court, but shall file only the original certificate of service stating that the response has been served on the other parties and the date of service. Except as provided in Rule 30(f)(1), Rule 32 or unless otherwise ordered by the court, depositions shall not be filed with the court.

(2) A party filing a motion under subdivision (c) or a motion under Rule 37(a) shall attach to the motion a copy of the request for discovery or the response which is at issue.

Rule 55. Default.

~~(a) Default.~~

~~(1)~~ (a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter ~~his~~ the default of that party.

~~(2) Notice to party in default. After the entry of the default of any party, as provided in Subdivision (a)(1) of this rule, it shall not be necessary to give such party in default any notice of action taken or to be taken or to serve any notice or paper otherwise required by these rules to be served on a party to the action or proceeding, except as provided in Rule 5(a), in Rule 58A(d) or in the event that it is necessary for the court to conduct a hearing with regard to the amount of damages of the nondefaulting party.~~

(b) Judgment. Judgment by default may be entered as follows:

(1) By the clerk. ~~When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, and the defendant has been personally served otherwise than by publication or by personal service outside of this state, the clerk upon~~ Upon request of the plaintiff the clerk shall enter judgment for the amount ~~due~~ claimed and costs against the defendant~~,~~ if ~~he has been defaulted~~ :

(A) the default of the defendant is for failure to appear ~~and if he~~ ;

(B) the defendant is not an infant or incompetent person;

(C) the defendant has been personally served pursuant to Rule 4(d)(1); and

(D) the claim against the defendant is for a sum certain or for a sum that can be made certain by computation.

(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other

matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment against the state or officer or agency thereof. No judgment by default shall be entered against the state of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

Form 2. 20 Day Summons

[Caption and signature block as in Form 1]

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are summoned and required to answer the attached complaint. Within 20 days after service of this summons, you must file your written answer with the clerk of the court at the following address: _____, and you must mail or deliver a copy to plaintiff's attorneys at the address listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint. The complaint is on file with the clerk of the court.

Form 3. 10 Day Summons (Renumbered from Form 1a)

[Caption and signature block as in Form 1]

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are summoned and required to answer the attached complaint. Within 20 days after service of this summons, you must file your written answer with the clerk of the court at the following address: _____, and you must mail or deliver a copy to plaintiff's attorneys at the address listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the complaint. Within 10 business days after service of this summons on you, the complaint will be filed with the clerk of the court. If the complaint is not filed with the court within 10 business days after service of this summons upon you, then you do not need to file an answer to the complaint. You may call the clerk of the court at (phone number) at least 13 days after service of this summons upon you to determine if the complaint has been filed. This is an action to: (describe nature of action).

Small Claims Rule 3. Service of the Affidavit.

Rule 3. Service of the Affidavit.

(a) After filing the Affidavit and receiving a trial date, plaintiff must serve the Affidavit on defendant. To serve the affidavit, plaintiff must either:

(1) ~~deliver the Affidavit and a copy to~~ have the Affidavit served on defendant by a sheriff's department, ~~or~~ constable, or person regularly engaged in the business of serving process ~~for service upon the defendant~~ and pay for that service; or

(2) ~~deliver a copy of~~ have the Affidavit delivered to defendant by a method of mail or commercial courier service that requires defendant to sign a document indicating receipt and provides for return of that document to ~~the court~~ plaintiff.

(b) The Affidavit must be served at least thirty calendar days before the trial date. Service by mail or commercial courier service is complete on the date the receipt is signed by defendant.
(c) Proof of service must be filed with the court no later than ten calendar days after service. If service is by mail or commercial courier service, plaintiff must file a Proof of Service (Form D). If service is by a sheriff, ~~or~~ constable, or person regularly engaged in the business of serving process, proof of service must be filed by ~~the sheriff or constable~~ the person completing the service.

Small Claims Form A

_____ COURT, STATE OF UTAH
_____ COUNTY, SMALL CLAIMS DEPARTMENT
ADDRESS: _____

_____, Plaintiff Name _____ Street Address _____ City, State, ZIP Phone _____, Defendant Name _____ Street Address _____ City, State, ZIP Phone	SMALL CLAIMS AFFIDAVIT AND ORDER (**FORM A**) Case No. _____

AFFIDAVIT

Plaintiff swears that the following is true:

(1) Defendant owes plaintiff	$ _____
[ ] plus a $37.00 filing fee for a claim of $2,000 or less	$ _____
[ ] plus a $60.00 filing fee for a claim of more than $2,000	$ _____
plus an estimated service fee of	$ _____
for a total of	$ _____.

(2) This debt arose on _____ for:
_____
_____
_____
_____.

(3) Defendant resides or the claim arose within the jurisdiction of this court.

Plaintiff: _____

By _____
(Agent's name and title, if appropriate)

SUBSCRIBED and SWORN to before me on _____, 20 ___.

_____
Clerk, Deputy or Notary

ORDER OF THE COURT

THE STATE OF UTAH TO THE DEFENDANT: You are directed to appear at a trial and answer the above claim:

On Date: _____ At Time: _____ At Address:_____

If you fail to appear at the trial, judgment may be entered against you for the amount listed above.

Dated _____, 20 _____ _____
Clerk or Deputy

READ THE INSTRUCTIONS THAT ACCOMPANY THIS FORM

HOW TO FILE A SMALL CLAIMS AFFIDAVIT OR COUNTER AFFIDAVIT

Small Claims cases are governed by Utah Code Title 78, Chapter 6. The Supreme Court has adopted "simplified rules of procedure and evidence" called the Rules of Small Claims Procedures. If you have any questions not addressed in these instructions, refer to the Rules of Small Claims Procedures or the Utah Code. You should be able to locate a copy in your local library, on the State Courts' Website at http://courtlink.utcourts.gov (for Rules of Small Claims Procedures), or the Legislature's Website at http://www.state.le.us (for the Utah Code).

INSTRUCTIONS TO THE PLAINTIFF

1. FILING SUIT. You are the "plaintiff" in this case and the person you are suing is the "defendant." The maximum amount that you may sue for is $5,000.00. Claims must be for money only. The Small Claims Department cannot be used to sue for possession of property or to evict a tenant. You may not sue a governmental entity using small claims procedures. To sue a governmental entity you must comply with special statutory procedures and the Utah Rules of Civil Procedure. The debt must be owed to you. An employee may represent an employer, but you may not bring an action on behalf of anyone else. The Small Claims Department has jurisdiction over cases in which the

defendant resides or the debt arises within the geographic boundaries of the court. You need to know the amount of the debt, what it is for, and the defendant's name, street address and telephone number. If you are suing a business, call the Department of Commerce at 801-530-4849 or http://www.e-utah.org/serv/bes to obtain the business' proper name and the name of its registered agent.

You must prepare the **Affidavit**, sign it in the presence of a notary public or court clerk, have your signature notarized, and file it with the court clerk. The **Affidavit** should be typewritten, but will be accepted if legibly handwritten. You must pay a filing fee ($37.00 for claims $2000.00 or less, $60.00 for claims over $2000.00) at the time you file the **Affidavit**. If you can not afford the filing fee, you can file an "Affidavit of Impecuniosity" (form available from the court). You will need to provide relevant financial information and the court may decide to waive the filing fee.

It is your responsibility to serve the defendant. You can serve the defendant by:

mailing a copy of the **Affidavit** to the defendant by any method that requires the defendant to sign acknowledging receipt (examples would be registered or certified mail with return receipt requested to be signed by addressee only or a commercial courier service that will return a receipt signed by the addressee only); or

giving the **Affidavit** to the Sheriff's department, ~~or~~ Constable~~,~~ or any person regularly engaged in the business of serving process for service on the defendant, and paying for the service.

The **Affidavit** must be served on defendant at least 30 calendar days before the trial date. If you serve the defendant by mail, the date of service is the date that the defendant signs the receipt. If you serve the defendant by mail, you must fill out and file with the court the **Proof of Service** (Form D). The Proof of Service Form must be filed with the court within 10 calendar days of service and must have the original receipt signed by the defendant attached. If the **Affidavit** is served by the sheriff's office, ~~or~~ constable, or person regularly engaged in the business of serving process, the Proof of Service will be filed by ~~the sheriff or constable~~that person. You will need to make sure the Affidavit has been served and proof of the service has been filed with the Court Clerk.

2. TRIAL. The clerk will set a trial date and give you a copy of the **Affidavit** with the trial date on it. **If you fail to appear at trial, your case will be dismissed "with prejudice" and you may not be able to re-file your claim.**

3. COUNTER AFFIDAVIT. If defendant files a **Counter Affidavit** against you, trial may be rescheduled. **If you fail to appear at trial after a Counter Affidavit has been filed, judgment may be entered against you for the amount requested in the Counter Affidavit.**

INSTRUCTIONS TO THE DEFENDANT

1. TRIAL. You have had a lawsuit filed against you. If you wish to contest the plaintiff's claim, you must appear at trial on the appointed day. **If you fail to appear at trial, judgment may be entered against you for the amount requested.**

2. PAYMENT. If you do not dispute the claim, make arrangements with plaintiff to pay the claim and the court costs. If the plaintiff obtains judgment and pursues collection through the court, additional court costs and interest may be charged to you.

3. COUNTER AFFIDAVIT. If the plaintiff owes you money, you may file a **Counter Affidavit** on a form provided by the clerk. You must file the **Counter Affidavit** and pay the proper fee ($35.00 for claims $2000.00 or less, $50.00 for claims over $2000.00) at least 15 calendar days prior to the trial date. The Court Clerk will mail a copy of the **Counter Affidavit** to the plaintiff. If you intend to file a **Counter Affidavit**, many of the "Instructions To The Plaintiff" will apply to you. Read them.

ADDITIONAL INSTRUCTIONS TO BOTH PARTIES

1. ATTORNEYS. Small Claims cases are informal. Parties are encouraged to represent themselves. However, you may hire an attorney if you wish. Parties with attorneys will not get preferential treatment.

2. SETTLEMENT. If the claim is settled prior to the trial date, call the court for instructions.

3. POSTPONING THE TRIAL. If you want to change the trial date, you must request a "Continuance." Fill out the **Request for Continuance** form available at the court. The court must receive your **Request for Continuance** at least five calendar days before trial. The Court Clerk can grant a continuance of up to 45 calendar days. A longer continuance may be granted only by the judge. Each side can only get one continuance from the Court Clerk.

4. EVIDENCE AND WITNESSES. It is extremely important that you bring with you to trial all witnesses and papers necessary to prove your claim or defense. If you fail to do this, the case may be decided against you. Strict rules of evidence do not apply in trials of small claims actions. Irrelevant or unduly repetitious evidence will be excluded. A court may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their serious business affairs. The judge may allow hearsay that is probative, trustworthy and credible. "Hearsay" is testimony about what someone else said. If at all possible, witnesses should testify about their first-hand knowledge. However, if possible, a party should have witnesses to testify rather than rely on hearsay. Claims based entirely on hearsay will generally be disallowed. Evidence should be offered through the statements of live witnesses at trial, except that written statements such as repair bids, appraisals, repair bills and medical bills may be used instead of live testimony to establish the **amount** of a claim. If you intend to rely on such

written statements, you should bring them with you. Be sure that the statements are itemized, signed and submitted on the preparer's original letterhead. If your case involves a damaged item, you should give the other party a chance to inspect the damage prior to trial.

If you need the testimony of a witness who will not attend trial voluntarily, you should ask the court or your attorney to issue a **Subpoena** requiring that person to attend. It is your responsibility to have the **Subpoena** served and to pay the witness fee and service fee. A subpoena must be served at least 5 calendar days before trial. You may have a witness appear voluntarily without a subpoena, but the judge will not continue the trial if the witness fails to appear.

5. JUDGMENT. If judgment is granted, the winning party has the right to enforce the judgment. The losing party may be required to testify regarding assets and income. A lien can be placed on the losing party's property, and non-exempt wages, bank accounts, stocks and other assets can be seized and sold by the sheriff or constable. A judgment accrues interest and the prevailing party may be entitled to recover court costs accruing after judgment. **A judgment must be collected or renewed within 8 years of the date it is granted or it expires.** When a judgment is paid, the winning party must file a **Satisfaction of Judgment** with the court.

6. APPEAL. Either party may appeal a Small Claims judgment within 10 business days (not counting weekends or holidays) of the loser's receipt of notice of entry of judgment. A **Notice of Appeal** must be filed with the court that issued the judgment and the appropriate fee paid. The notice of appeal automatically suspends the judgment, and the winning party may not attempt to collect the judgment.

Utah Rules of Court-Annexed Alternative Dispute Resolution
Rule 104. Code of ethics for ADR providers.
This Code is adopted and made a part of these rules pursuant to Utah Code Ann. '' 78-31b-5(l). It applies to all arbitrators and mediators on the **court** roster acting pursuant to these rules and Code of Judicial Administration Rule 4-510. A court may impose sanctions against an ADR provider for violations of this Code which raise a substantial question as to the partiality of the arbitrator or a member of the majority of a panel, but a violation of other provisions of this Code does not establish grounds or authority for other judicial review of arbitration awards made under the court-annexed ADR program.
Canon I
ADR Providers Should Uphold The Integrity And Fairness Of The ADR Program
(a) Alternative Dispute Resolution is an important and proven method for resolving disputes. In order for ADR to be effective, there must be broad public confidence in the integrity and fairness of the process, similar to the confidence the public has in judges who adjudicate cases in the district court of this state. Like the court's judges, ADR providers serving under the program must observe high standards of ethical conduct so that the integrity and fairness of the process will be preserved. Accordingly, ADR providers should recognize their responsibility to the court, to the public, to the parties,

and to all other participants in the ADR processes. The provisions of this Code should be construed and applied to advance these objectives.
(b) For a case that is referred to arbitration or mediation, providers should accept an appointment only if they are in a position to adhere to the specific time limits for arbitration and mediation proceedings preserved by the rules.
(c) After accepting appointment to and while serving as provider for a particular case, an ADR provider should avoid entering into any financial, business, professional, family, or social relationship, or acquiring any financial or personal interest which (1) is likely to affect their impartiality or (2) might reasonably create the appearance of partiality or bias. For a reasonable time after an ADR proceeding has been concluded, the provider should avoid entering into any such relationship, or acquiring any such interest, under circumstances which might reasonably create the appearance that the provider had been influenced in the proceeding by the anticipation or expectation of the relationship or interest.
(d) Providers should conduct themselves in a manner that is fair to all parties and their counsel; they should not be swayed by outside pressure, public clamor, fear of criticism, or self-interest.
(e) Providers should neither exceed the authority delegated to them nor do less than is required to exercise that authority.
(f) Providers should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse of, or disruption to, the ADR processes.
(g) The ethical objectives of providers begin prior to acceptance of the appointment to a particular case and continue throughout all stages of the proceedings. In addition, wherever specifically set forth in this Code, certain ethical obligations continue even after the award in the case has been made or after the case has been successfully resolved.
(h) A provider should not directly contact a party to solicit the selection of that provider in a particular case if the party is represented by counsel.
(i) A provider should refrain from promises and guarantees of results. A provider should not advertise statistical settlement data or settlement rates.
(j) A provider should accurately represent his/her qualifications. In an advertisement or other communication, a mediator may make reference to meeting state, national, or private organizational qualifications only if the entity referred to has a procedure for qualifying ADR providers and the provider has been duly granted the requisite status.
(k) A provider should have the participants sign a written agreement to mediate their dispute.
(l) A provider should include in the participants' written agreement to mediate a description of their fee arrangement with the provider.

C**anon III**

ADR Providers Should Conduct The Proceedings Fairly And Diligently

(a) ADR providers should conduct the proceedings in an impartial, evenhanded manner and treat all parties with equality and fairness at all stages of the proceedings.
(1) Impartial means free from favoritism or bias in word, action or appearance, and includes a commitment to assist all participants as opposed to any one individual.
(2) ADR providers should guard against bias or partiality based on the participants' personal characteristics, background or performance at the proceeding.

(b) ADR providers should perform their duties diligently and conclude the case as promptly and efficiently as the circumstances reasonably permit, without compromising the interests of justice. (c) ADR providers should be patient with and courteous to the parties, their attorneys, and any witnesses. They should encourage similar conduct by all participants in the proceedings.
(d) Unless otherwise agreed by the parties, providers should accord to all parties the right to appear in person and to be heard after due notice in writing of the date, time, and place of hearing.
(e) ADR providers should not deny any party the opportunity to be represented by counsel. (f) Where any party fails to appear, arbitrators may proceed with scheduled ADR proceedings only after ensuring that appropriate written notice was provided to the absent party.
(g) If a panel is selected for arbitration, the chair should permit and encourage all arbitrators to participate equally in the arbitration process.
(h) Mediators shall inform the participants that they may withdraw from mediation at any time and are not required to reach an agreement. However, if the mediation is conducted pursuant to a mandatory mediation program, the mediator shall inform the parties of any participation requirements of that program.

Canon IV
ADR Providers Should Be Faithful To The Relationship Of Trust And Confidentiality Inherent In That Appointment

(a) Maintaining confidentiality encourages candor, a full exploration of issues, and the integrity of the ADR program. Ethical standards require strict compliance with the promise of confidentiality as an integral element of the ADR process. Participation as a provider assumes building a relationship with the parties that is based on trust. At no time should any provider use confidential information acquired during ADR proceedings to gain advantage, personal or otherwise, or to adversely affect the interests of any party or any other individual or entity.
(b) The provider should discuss the providers' and the participants' expectations of confidentiality prior to undertaking the process. Prior to undertaking the process the provider should inform the participants of applicable limitations of confidentiality such as statutory, judicial or ethical reporting requirements.
(c) In mediation, the written agreement to mediate should include provisions concerning confidentiality.

(d) ADR providers should not utilize any information disclosed during the ADR processes for private gain or personal advantage. Neither should providers seek publicity from participation in a particular ADR proceeding to enhance their personal or professional position or status.

(e) Unless otherwise agreed by the parties, providers should keep confidential all matters relating to the proceedings and decisions in which they participate. No information about evidence produced, admissions, or stipulations made, legal positions taken, reasons for the amount or nature of an arbitration award, unless set forth therein, or conclusions as to the credibility of any witness should be disclosed to anyone who is not a party to the arbitration proceeding.

(f) No arbitrator is at liberty to inform anyone of, or to discuss with anyone other than the parties and other arbitrators, the award or decision.

(g) Mediators should preserve and maintain the confidentiality of all mediation proceedings. They should not disclose or discuss any information about or related to the proceedings to anyone, including the assigned judge. Mediators should keep confidential from other parties any information obtained in individual caucuses unless the party to the caucus permits disclosure. They should secure and ensure the confidentiality of mediation proceeding records that they do not destroy. They should render anonymous all identifying information when mediation proceeding materials are used for research, training, or statistical compilations.

(h) If subpoenaed or otherwise given notice to testify or to produce documents the mediator should inform the participants immediately. The mediator should not testify or provide documents in response to a subpoena or other notice without an order of the court if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.

Canon VIII

Process And Terms Of Settlement In Mediation

(a) As self-determination is a fundamental principle of mediation, the mediator recognizes that the primary responsibility for the resolution of a dispute and the forging of a settlement agreement rests with the parties and their attorneys if represented. The mediator=s obligation is to assist the disputants to reach an informed and voluntary agreement.

(b) In the course of the mediation process, no mediator shall coerce a settlement or otherwise pressure any party or the attorneys for any party into accepting an agreement. Nor shall any mediator make for any party substantive decisions affecting the matter at issue. Mediators may make suggestions and may draft proposals for the consideration by the parties and their attorneys, but all decisions are to be made voluntarily and without duress on the part of the mediator by the parties in consultation with their attorneys.

(c) Mediators should not attempt to usurp or otherwise assume the role of counsel for any party.

Utah Rules of Criminal Procedure

Rule 17. The trial.

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

(1) In prosecutions of misdemeanors and infractions, defendant may consent in writing to trial in his absence;

(2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present; and

(3) The court may exclude or excuse a defendant from trial for good cause shown which may include tumultuous, riotous, or obstreperous conduct.

Upon application of the prosecution, the court may require the personal attendance of the defendant at the trial.

(b) Cases shall be set on the trial calendar to be tried in the following order:

(1) misdemeanor cases when defendant is in custody;

(2) felony cases when defendant is in custody;

(3) felony cases when defendant is on bail or recognizance; and

(4) misdemeanor cases when defendant is on bail or recognizance.

(c) All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.

(d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.

(e) In all cases, the number of members of a trial jury shall be as specified in Section 78-46-5, U.C.A. 1953.

(f) In all cases the prosecution and defense may, with the consent of the accused and the approval of the court, by stipulation in writing or made orally in open court, proceed to trial or complete a trial then in progress with any number of jurors less than otherwise required.

(g) After the jury has been impaneled and sworn, the trial shall proceed in the following order:

(1) The charge shall be read and the plea of the defendant stated;

(2) The prosecuting attorney may make an opening statement and the defense may make an opening statement or reserve it until the prosecution has rested;

(3) The prosecution shall offer evidence in support of the charge;

(4) When the prosecution has rested, the defense may present its case;

(5) Thereafter, the parties may offer only rebutting evidence unless the court, for good cause, otherwise permits;

(6) When the evidence is concluded and at any other appropriate time, the court shall instruct the jury; and

(7) Unless the cause is submitted to the jury on either side or on both sides without argument, the prosecution shall open the argument, the defense shall follow and the prosecution may close by responding to the defense argument. The court may set reasonable limits upon the argument of counsel for each party and the time to be allowed for argument.

(h) If a juror becomes ill, disabled or disqualified during trial and an alternate juror has been selected, the case shall proceed using the alternate juror. If no alternate has been selected, the parties may stipulate to proceed with the number of jurors remaining. Otherwise, the jury shall be discharged and a new trial ordered.

(i) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(2) If the judge permits jurors to submit questions, the judge should advise the jurors before the first witness that they may write the question as it occurs to them and submit the question to the clerk or bailiff after the examination of a witness is complete. The judge should advise the jurors that some questions may not be asked.

(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.

~~(i)~~ (j) When in the opinion of the court it is proper for the jury to view the place in which the offense is alleged to have been committed, or in which any other material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. The officer shall be sworn that while the jury are thus conducted, he will suffer no person other than the person so appointed to speak to them nor to do so himself on any subject connected with the trial and to return them into court without unnecessary delay or at a specified time.

~~(j)~~ (k) At each recess of the court, whether the jurors are permitted to separate or are sequestered, they shall be admonished by the court that it is their duty not to converse among themselves or to converse with, or suffer themselves to be addressed by, any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

~~(k)~~ (l) Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.

~~(l)~~ (m) When the case is finally submitted to the jury, they shall be kept together in some convenient place under charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered by the court. Except by order of the court, the officer having them under his charge shall not allow any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

~~(m)~~ (n) After the jury has retired for deliberation, if they desire to be informed on any point of law arising in the cause, they shall inform the officer in charge of them, who shall communicate such request to the court. The court may then direct that the jury be brought before the court where, in the presence of the defendant and both counsel, the court shall respond to the inquiry or advise the jury that no further instructions shall be given. Such response shall be recorded. The court may in its discretion respond to the inquiry in writing without having the jury brought before the court, in which case the inquiry and the response thereto shall be entered in the record.

~~(n)~~ (o) If the verdict rendered by a jury is incorrect on its face, it may be corrected by the jury under the advice of the court, or the jury may be sent out again.

~~(o)~~ (p) At the conclusion of the evidence by the prosecution, or at the conclusion of all the evidence, the court may issue an order dismissing any information or indictment,

or any count thereof, upon the ground that the evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

Advisory Committee Note. Paragraph ~~(k)~~ (l). The committee recommends amending paragraph ~~(k)~~ (l) to establish the right of jurors to take notes and to have those notes with them during deliberations. The committee recommends removing depositions from the paragraph not in order to permit the jurors to have depositions but to recognize that depositions are not evidence. Depositions read into evidence will be treated as any other oral testimony. These amendments and similar amendments to the Rules of Civil Procedure will make the two provisions identical.

Rule 29. Disability and disqualification of a judge or change of venue.

(a) If, by reason of death, sickness, or other disability, the judge before whom a trial has begun is unable to continue with the trial, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council, upon certifying that the judge is familiar with the record of the trial, may, unless otherwise disqualified, proceed with and finish the trial, but if the assigned judge is satisfied that neither he nor another substitute judge can proceed with the trial, the judge may, in his discretion, grant a new trial.

(b) If, by reason of death, sickness, or other disability, the judge before whom a defendant has been tried is unable to perform the duties required of the court after a verdict of guilty, any other judge of that court or any judge assigned by the presiding officer of the Judicial Council may perform those duties.

(c)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias or prejudice, or conflict of interest.

(B) The motion shall be filed after commencement of the action, but not later than 20 days after the last of the following:

(i) assignment of the action or hearing to the judge;

(ii) appearance of the party or the party's attorney; or

(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon as practicable.

(C) Signing the motion or affidavit constitutes a certificate under Rule 11, Utah Rules of Civil Procedure and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(2) The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. Assignment in justice court cases shall be in accordance with Utah Code Ann. ' 78-5-138. The presiding judge of the

court, any judge of the district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so. Assignment in justice court cases shall be in accordance with Utah Code Ann. ' 78-5-138.

(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(C) The reviewing judge may deny a motion not filed in a timely manner.

(d) (i) If the prosecution or a defendant in a criminal action believes that a fair and impartial trial cannot be had in the jurisdiction where the action is pending, either may, by motion, supported by an affidavit setting forth facts, ask to have the trial of the case transferred to another jurisdiction.

(ii) If the court is satisfied that the representations made in the affidavit are true and justify transfer of the case, the court shall enter an order for the removal of the case to the court of another jurisdiction free from the objection and all records pertaining to the case shall be transferred forthwith to the court in the other county. If the court is not satisfied that the representations so made justify transfer of the case, the court shall either enter an order denying the transfer or order a formal hearing in court to resolve the matter and receive further evidence with respect to the alleged prejudice.

(e) When a change of judge or place of trial is ordered all documents of record concerning the case shall be transferred without delay to the judge who shall hear the case.

Utah Rules of Appellate Procedure
Rule 4. Appeal as of right: when taken.

(a) Appeal from final judgment and order. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) Motions post judgment or order. If a timely motion under the Utah Rules of Civil Procedure is filed in the trial court by any party (1) for judgment under Rule 50(b); (2) under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 59 to alter or amend the judgment; or (4) under Rule 59 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. Similarly, if a timely motion is filed in the trial court (1) for a new trial under Rule 24 of the Utah Rules of Criminal Procedure ~~is filed in the trial court under Rule 24 for a new trial~~, ; or (2) to withdraw a plea under Utah Code Ann. '

77-13-6, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying the motion to withdraw the plea. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order of the trial court disposing of the motion as provided above.

(c) Filing prior to entry of judgment or order. Except as provided in paragraph (b) of this rule, a notice of appeal filed after the announcement of a decision, judgment, or order but before the entry of the judgment or order of the trial court shall be treated as filed after such entry and on the day thereof.

(d) Additional or cross-appeal. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by paragraph (a) of this rule, whichever period last expires.

(e) Extension of time to appeal. The trial court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraph (a) of this rule. A motion filed before expiration of the prescribed time may be ex parte unless the trial court otherwise requires. Notice of a motion filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of practice of the trial court. No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(f) Appeal by an Inmate Confined in an Institution. If an inmate confined in an institution files a notice of appeal in either a civil or criminal case, the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been prepaid. If a notice of appeal is filed in the manner provided in this paragraph (f), the 14-day period provided in paragraph (d) runs from the date when the trial court receives the first notice of appeal.

Rule 9. Docketing statement.

(a) *Time for filing.* Within 21 days after a notice of appeal, cross-appeal, or a petition for review is filed, the appellant, cross-appellant, or petitioner shall file an original and two copies of a docketing statement with the clerk of the appellate court and serve a copy with attachments on all parties. The Utah Attorney General shall be served in any appeal arising from a crime charged as a felony or a juvenile court proceeding. [~~An original and two copies of the docketing statement shall be filed with the court.~~]

(b) [~~*Purpose of docketing statement.*~~] *Interlocutory appeals.* [~~The docketing statement is not a brief and should not contain arguments or procedural motions. It is used by the appellate court in assigning cases to the Supreme Court or to the Court of Appeals when both have jurisdiction, in making certifications to the Supreme Court, in classifying cases for determining the priority to be accorded them, in making summary dispositions when appropriate, and in making calendar assignments.~~] When a petition for interlocutory review is granted under Rule 5, a docketing statement shall not be filed, unless otherwise ordered.

(c) *Content of docketing statement.* The docketing statement shall contain the following information [~~in the order set forth below~~]:

(1) A concise statement of the nature of the proceeding, e.g., "This appeal is from a final judgment or decree of the First District Court" or "This petition is from an order of the Utah State Tax Commission."

(2) The statutory provision that confers jurisdiction on the appellate court.

[~~(1)~~] (3) The following dates relevant to a determination of the timeliness of the notice of appeal:

(A) The date of entry of the final judgment or order [~~sought to be reviewed;~~] from which the appeal is taken.

(B) The date the notice of appeal or petition for review was filed.

(C)[~~t~~] The date of [~~all~~] any motions filed pursuant to Rules 50[~~(a) and~~](b), 52(b), [~~54(b),~~] or 59, Utah Rules of Civil Procedure, or Rule[~~s~~] 24[~~or 26~~], Utah Rules of Criminal Procedure: ~~, or a statement that no such motions have been filed;~~ and the date and effect of [~~all~~] any orders disposing of such motions[~~; and the date the notice of appeal or the petition for review was filed~~].

~~(2)(A) The specific rule or statutory authority that confers jurisdiction on the appellate court to decide the appeal or the petition for review.~~

(4) If the appellant is an inmate confined in an institution and is invoking Rule 4(f), a statement to that effect.

[~~(B)~~] (5) If an appeal is from an order in a multiple-party or a multiple-claim case, and the judgment has been certified as a final judgment by the trial court pursuant to Rule 54(b), Utah Rules of Civil Procedure[~~,~~]:

[~~(i)~~] (A) a statement of what claims and parties remain before the trial court for adjudication, and

[~~(ii)~~] (B) a statement of whether the facts underlying the appeal are sufficiently similar to the facts underlying the claims remaining before the trial court to constitute res judicata on those claims.

[~~(C) If the case contains a claim for damages, the amount of the claim, exclusive of court costs, interest, and attorney fees.~~]

(6) If the case is criminal,

(A) the charges of which the defendant was convicted or, if the defendant is not convicted, the dismissed or pending charges;

(B) any sentence imposed; and

(C) whether the defendant is currently incarcerated.

[~~(3) A concise statement of the nature of the proceedings, e.g., "this appeal is from a final judgment or decree of the _____ court" or "this petition is to review an order of _____ administrative agency."~~]

[~~(4) A concise statement of facts material to a consideration of the questions presented.~~]

[~~(5)The issues presented by the appeal, expressed in the terms and circumstances of the case, but without unnecessary detail. The questions should not be repetitious. General conclusions such as "the judgment of the trial court is not supported by the law or facts," are not acceptable. For each issue appellant must state the applicable standard of appellate review and cite supporting authority.~~]

(7) A statement of the issues appellant intends to assert on appeal, including, for each issue,

(A) citations to determinative statutes, rules, or cases;

(B) the applicable standard of appellate review, with supporting authority.

(8) A succinct summary of facts material to a consideration of the issues presented.

[~~(6)~~] (9) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, [~~the phrase ASubject to assignment to the Court of Appeals@ should appear immediately under the title of the document, i.e., ADocketing Statement.@~~

~~(7) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the appellant may set forth concisely in not more than two pages~~] and the appellant advocates or opposes such an assignment, a succinct statement of reasons why the Supreme Court should or should not assign [~~decide~~] the case. The Supreme Court may, for example, consider whether the case presents or involves one or more of the following:

(A) a [~~substantial~~] novel constitutional issue; [~~not yet decided and, if so, what the issue or issues are;~~]

(B) an important issue of first impression; [~~in the state and of substantial importance in the administration of justice;~~]

(C) a conflict in Court of Appeals decisions; [~~that needs to be resolved by the Supreme Court;~~]

(D) any other persuasive reason why the Supreme Court should or should not resolve the issue.

[~~(8) Citations to statutes, rules, or cases believed to be determinative of the respective issues stated.~~]

[~~(9)~~] (10) A reference to all related or prior appeals in the case, with case numbers and citations. [~~If the reference is to a prior appeal, the appropriate citation should be given.~~]

(d) *Necessary attachments.* [~~Attached~~] Copies of the following must be attached to each copy of the docketing statement: [~~shall be a copy of the following:~~]

(1) The final judgment [~~and any other~~] or order [~~sought to be reviewed~~] from which the appeal is taken;

(2) Any [~~opinion~~] rulings or findings of the trial court or administrative tribunal included in the judgment from which the appeal is taken;

~~(3) All motions filed pursuant to Rules 50(a) and (b), 52(b), 54(b), and 59, Utah Rules of Civil Procedure, and orders disposing of such motions; and~~

(3) In appeals arising from an order of the Public Service Commission, any application for rehearing filed pursuant to Utah Code Ann. ' 54-7-15;

(4) The notice of appeal and any order extending the time for the filing of a notice of appeal.

(5) Any notice of claim.

(6) Any motions filed pursuant to Rules 50(b), 52(b), 54(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and orders disposing of such motions; and

(7) If the appellant is an inmate confined in an institution and is invoking Rule 4(f), the notarized statement or written declaration required by that provision.

[~~(e) Attachment to indicate date filed. The attachments required by this rule must bear a clear representation of the original date of filing by means of the trial court's filing seal or mark or a copy conformed to the original by the trial court.~~]

[~~(f) Response to~~] *(e) Appellee's statement regarding assignment.* If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, [~~the~~] an appellee may within 10 days of service of the docketing statement file a succinct statement of reasons why the appeal should or should not be assigned. [~~response to the appellant's contentions in subparagraph (c)(7). If appellant filed no statement under (c)(7), the appellee may file a statement in the same form as provided by (c)(8). The response may support or oppose the appellant's position. The response or statement shall not be more than two pages long, and shall be filed within 10 days after service of the docketing statement.~~]

(g) *Consequences of failure to comply.* Docketing statements which fail to comply with this rule will not be accepted. Failure to comply may result in dismissal of the appeal or the petition. An issue not listed in the docketing statement may nevertheless be raised in appellant's opening brief.

ADVISORY COMMITTEE NOTE

The content of the docket statement has been reordered and brought into conformity with revised Rule 4, Utah Rules of Appellate Procedure. This rule is satisfied by a docketing statement in compliance with form 7.

Rule 11. The record on appeal.

(a) Composition of the record on appeal. The original papers and exhibits filed in the trial court, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and the docket sheet, shall constitute the record on appeal in all cases. A copy of the record certified by the clerk of the trial court to conform to the original may be substituted for the original as the record on appeal. Only those papers prescribed under paragraph (d) of this rule shall be transmitted to the appellate court.

(b) Pagination and indexing of record.

(1) Immediately upon filing of the notice of appeal, the clerk of the trial court shall securely fasten the record in a trial court case file, with collation in the following order:

(A) the index prepared by the clerk;

(B) the docket sheet;

(C) all original papers in chronological order;

(D) all published depositions in chronological order;

(E) all transcripts prepared for appeal in chronological order; and (F) a list of all exhibits offered in the proceeding

(2) (A) The clerk shall mark the bottom right corner of every page of the collated index, docket sheet, and all original papers as well as the cover page only of all published depositions and the cover page only of each volume of transcripts constituting the record with a sequential number using one series of numerals for the entire record.

(B) If a supplemental record is forwarded to the appellate court, the clerk shall collate the papers, depositions, and transcripts of the supplemental record in the same order as the original record and mark the bottom right corner of each page of the collated original papers as well as the cover page only of all published depositions and the cover page only of each volume of transcripts constituting the supplemental record with a sequential number beginning with the number next following the number of the last page of the original record.

(3) The clerk shall prepare a chronological index of the record. The index shall contain a reference to the date on which the paper, deposition or transcript was filed in the trial

court and the starting page of the record on which the paper, deposition or transcript will be found.

(4) Clerks of the trial and appellate courts shall establish rules and procedures for checking out the record after pagination for use by the parties in preparing briefs for an appeal or in preparing or briefing a petition for writ of certiorari.

(c) Duty of appellant. After filing the notice of appeal, the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of paragraphs (d) and (e) of this rule and shall take any other action necessary to enable the clerk of the trial court to assemble and transmit the record. A single record shall be transmitted.

(d) Papers on appeal.

(1) Criminal cases. All of the papers in a criminal case shall be included by the clerk of the trial court as part of the record on appeal.

(2) Civil cases. ~~In all civil cases, the papers to be transmitted shall consist of the following.~~ Unless otherwise directed, all of the papers in a civil case shall be included by the clerk of the trial court as part of the record on appeal.

~~(A) Civil cases with short records. In civil cases where all the papers, excluding any transcripts, total fewer than 300 pages, all of the papers will be transmitted to the appellate court upon completion of the filing of briefs. In such cases, the appellant shall serve upon the clerk of the trial court, simultaneously with the filing of appellant's reply brief, notice of the date on which appellant's reply brief was filed. If appellant does not intend to file a reply brief, appellant shall notify the clerk of the trial court of that fact within 30 days of the filing of appellee's brief.~~

~~(B) All other civil cases. In all other civil cases where the papers, excluding any transcripts, are or exceed 300 pages, all parties shall file with the clerk of the trial court, within 10 days after briefing is completed, a joint or separate designation of those papers referred to in their respective briefs. Only those designated papers and the following, to the extent applicable, shall be transmitted to the clerk of the appellate court by the clerk of the trial court:~~

~~(i) the pleadings as defined in Rule 7(a), Utah Rules of Civil Procedure;~~

~~(ii) the pretrial order, if any;~~

~~(iii) the final judgment, order, or interlocutory order from which the appeal is taken;~~

~~(iv) other orders sought to be reviewed, if any;~~

~~(v) any supporting opinion, findings of fact or conclusions of law filed or delivered by the trial court;~~

~~(vi) the motion, response, and accompanying memoranda upon which the court rendered judgment, if any;~~

~~(vii) jury instructions given, if any;~~

~~(viii) jury verdicts and interrogatories, if any;~~

~~(ix) the notice of appeal.~~

(3) Agency cases. ~~Where all papers in the agency record total fewer than 300 pages, the agency shall transmit all papers to the appellate court. Where all papers in the agency record total 300 or more pages, the parties shall, within 10 days after briefing is completed, file with the agency a joint or separate designation of those papers necessary~~

~~to the appeal. The agency shall transmit those designated papers to the appellate court. Instead of filing all papers or designated papers, the agency may, with the approval of the court, file only the chronological index of the record or of such parts of the record as the parties may designate. All parts of the record retained by the agency shall be considered part of the record on review for all purposes.~~ Unless otherwise directed, all papers in the agency file shall be included by the agency as part of the record.

(e) The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered.

(1) Request for transcript; time for filing. Within 10 days after filing the notice of appeal, the appellant shall request from the court executive a transcript of such parts of the proceedings not already on file as the appellant deems necessary. The request shall be in writing and shall state that the transcript is needed for purposes of an appeal. Within the same period, a copy shall be filed with the clerk of the trial court and the clerk of the appellate court. If the appellant desires a transcript in a compressed format, appellant shall include the request for a compressed format within the request for transcript. If no such parts of the proceedings are to be requested, within the same period the appellant shall file a certificate to that effect with the clerk of the trial court and a copy with the clerk of the appellate court.

(2) Transcript required of all evidence regarding challenged finding or conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Neither the court nor the appellee is obligated to correct appellant's deficiencies in providing the relevant portions of the transcript.

(3) Statement of issues; cross-designation by appellee. Unless the entire transcript is to be included, the appellant shall, within 10 days after filing the notice of appeal, file a statement of the issues that will be presented on appeal and shall serve on the appellee a copy of the request or certificate and a copy of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 10 days after the service of the request or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has requested such parts and has so notified the appellee, the appellee may within the following 10 days either request the parts or move in the trial court for an order requiring the appellant to do so.

(f) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in paragraph (a) of this rule, the parties may prepare and sign a statement of the case, showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court. The clerk of the trial court shall transmit the statement to the clerk of the appellate court within the time prescribed by Rule 12(b)(2). The clerk of the trial court shall transmit the index of the record to the clerk of the appellate court upon approval of the statement by the trial court.

(g) Statement of evidence or proceedings when no report was made or when transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or

if a transcript is unavailable, or if the appellant is impecunious and unable to afford a transcript ~~in a civil case~~, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement shall be served on the appellee, who may serve objections or propose amendments within 10 days after service. The statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and, as settled and approved, shall be included by the clerk of the trial court in the record on appeal.

(h) Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, the trial court, or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted. The moving party, or the court if it is acting on its own initiative, shall serve on the parties a statement of the proposed changes. Within 10 days after service, any party may serve objections to the proposed changes. All other questions as to the form and content of the record shall be presented to the appellate court.

Rule 12. Transmission of the record.

(a) Duty of reporter to prepare and file transcript; request for enlargement of time; notice to appellate court.

(1) Upon receipt of a request for a transcript, the court executive shall file with the clerk of the appellate court an acknowledgment that the request has been received and the date of its receipt. The court executive shall assign the preparation of the transcript to an official court reporter or, if recorded on video or audio equipment, to an official court transcriber in accordance with CJA 3-305. By stipulation of the parties approved by the appellate court, a person other than an official court transcriber may transcribe a recorded hearing. The transcript shall be completed and filed within 30 days of the assignment.

(2) The reporter may request from the clerk of the appellate court an enlargement of time in which to file the transcript. The request for enlargement of time shall be in writing and shall contain the elements stated in CJA 5-201(1). If filed prior to the expiration of the transcript preparation period, the request shall make a showing of good cause. If filed after the expiration of the period, the request shall make a showing of extraordinary circumstances beyond the control of the reporter. The reporter shall provide a copy of the request to the parties. The clerk of the appellate court shall provide written notice of the disposition of the request for enlargement of time to the court reporter, the parties, and the court executive. If the reporter fails to file the transcript within the original or extended period of time, the clerk of the appellate court shall notify the court executive.

(3) Upon completion of the transcript, the reporter shall file it with the clerk of the trial court and notify the clerk of the appellate court that the transcript has been filed. At the request of the person ordering the transcript or at the request of the appellate court, the court reporter shall file the transcript in a compressed format that places multiple complete pages of the original transcript upon each page of compressed transcript. The compressed transcript shall retain the page and line numbers of the original transcript. A compressed transcript may be certified as a correct copy of the original.

(b) Transmittal of record on appeal to appellate court; duty of trial court clerk or agency clerk.

(1) Duty of trial court clerk in criminal cases. In criminal cases, the record will be transmitted by the clerk of the trial court to the clerk of the appellate court upon completion of the transcript under paragraph (a) above or, if there is no transcript, within 20 days of the filing of the notice of appeal.

(2) Duty of trial court clerk in civil cases. In civil cases, unless otherwise ordered by the appellate court, the record shall remain in the custody of the trial court clerk during the preparation and filing of briefs.

(A) Transmit index. When the transcript is completed pursuant to paragraph (a) above, the clerk of the trial court shall immediately transmit a certified copy of the index prepared pursuant to Rule 11(b) to the clerk of the appellate court. If there is no transcript requested, the clerk of the trial court shall transmit the index of the record to the clerk of the appellate court within 20 days, but not sooner than 14 days, after the filing of the notice of appeal.

(B) Transmit record. Within ~~20~~ 10 days from the date of ~~receipt of the~~ notice from the clerk of the appellate court that briefing is complete ~~of appellant pursuant to Rule 11(d)(2)(A) or within 20 days of receipt of the designations from all parties to the appeal pursuant to Rule 11(d)(2)(B),~~ the clerk of the trial court shall transmit ~~to the clerk of the appellate court~~ the papers, transcript and exhibits in the appeal to the appellate court.

(3) Duty of court clerk in juvenile court cases. In juvenile court cases, the record will be transmitted by the juvenile court clerk to the clerk of the appellate court upon completion of the transcript under paragraph (a) above or, if there is no transcript, within 20 days of the filing of the notice of appeal.

(4) Duty of clerk in agency cases. In agency cases, unless otherwise ordered by the appellate court, the record shall remain in the custody of the agency during the preparation and filing of briefs.

(A) Transmit index. When the transcript is completed pursuant to paragraph (a) above, the clerk shall immediately transmit a certified copy of the index prepared pursuant to Rule 11(b) to the clerk of the appellate court. If there is no transcript requested, the clerk shall transmit the index of the record to the clerk of the appellate court within 20 days, but not sooner than 14 days, after the filing of the petition for review.

(B) Transmit record. ~~The agency shall not transmit the record to the appellate court until after preparation of briefs. Within 20 days from the date of receipt of the designations from all parties to the appeal pursuant to Rule 11(d)(3),~~ Within 10 days from the date of notice from the clerk of the appellate court that briefing is complete, the clerk shall transmit ~~to the clerk of the appellate court~~ the papers, transcript and exhibits in the appeal to the appellate court.

(5) Transmission of exhibits. Documents of unusual bulk or weight, and physical exhibits other than documents shall not be transmitted by the clerk of the trial court unless directed to do so by a party or by the clerk of the appellate court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Retention of the record in the trial court. If the record or any part of it is required in the trial court beyond the time set forth in paragraph (b) of this rule, the trial court on its own motion or after motion of a party may order the clerk of the trial court to retain the

record or parts thereof subject to the request of the appellate court. The clerk of the trial court shall transmit a copy of the order and of the index and the portion of the record not retained by the trial court to the clerk of the appellate court.

(d) Record for preliminary hearing in appellate court. If prior to the time the record is transmitted the record is required in the appellate court, the clerk of the trial court at the request of any party or of the appellate court shall transmit to the appellate court such parts of the original record as designated.

Form 7. Docketing Statement

[Counsel's Name and Bar Number]
[Counsel's Address]
[Counsel's Telephone]
Counsel for Appellant

IN THE [NAME OF COURT]

[PLAINTIFF],
DOCKETING STATEMENT
Plaintiff/Appellant

Case No. [Appellate Case Number]
Vs.
District Court Case Number _____

[DEFENDANT]
Class [Number]

PURSUANT TO RULE 9, Utah Rules of Appellate Procedure, appellant submits this docketing statement.

1. **Nature of the proceeding.** This appeal is from a final [judgment] [order] [decree] of the [*identify lower court or agency*].

2. **Jurisdiction.** This Court has jurisdiction pursuant to [Utah Code Ann. '78-2-2(3)(_)] [Utah Code Ann. '78-2a-3(2)(_)].

3. **Relevant dates.** a. Date the final judgment or order appealed from was entered:

b. Date the notice of appeal or petition for review was filed:

c. (1) Date any motions filed pursuant to Rules 50(b), 52(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure were filed:

(2) Date and effect of any orders disposing of such motions:

4. **Inmate mailbox rule.** The appellant [is] [is not] an inmate confined in an institution invoking rule 4(f).

5. **Rule 54(b).** This appeal [is] [is not] from an order in a multiple-party or a multiple-claim case in which the judgment has been certified as a final judgment by the trial court pursuant to Rule 54(b), Utah Rules of Civil Procedure. [If this is such a case, add the following information:]

a. The following claims and parties remain before the trial court for adjudication:

b. The facts underlying this appeal [are] [are not] sufficiently similar to the facts underlying the claims remaining before the trial court to constitute res judicata on those claims.

6. **Criminal cases.** [*If this is a criminal case, state:*]

a. The defendant was [charged with] [*if the appeal arises from a dismissal*] [convicted of] [*if the appeal arises from a conviction*] the following crime(s): [*list*].

b. The defendant received the following sentence: [*specify sentence*].

c. The defendant currently [is] [is not] incarcerated.

7. **Issues on appeal.** Appellant intends to assert the following issue(s) on appeal:

a. **Issue:** [*Succinctly state the first issue.*]

Determinative law: [*Cite any statutes, rules, or cases determinative of the first issue.*]

Standard of review: [*State applicable standard of appellate review for the first issue, with supporting authority.*]

b. [*Repeat for any additional issues.*]

Determinative law: [*Cite any statutes, rules, or cases determinative of the second issue.*]

Standard of review: [*State applicable standard of appellate review for the second issue, with supporting authority.*]

8. **Factual summary.** [*Succinctly summarize the facts necessary to understand the issue(s) presented.*]

9. **Assignment.** This appeal [is] [is not] subject to transfer by the Supreme Court to the Court of Appeals pursuant to Utah Code Ann. ' 78-2-2(4). [*If appropriate, add:*] The appellant [advocates] [opposes] such a transfer on the following grounds:

[a. *List one or more grounds*].

10. **Related appeals.** [There are no related appeals.] [The following are related or prior appeals:

a. *Give name, case number, and citation for each related appeal.*]

11. **Attachments.** The following are attached:

a. The final judgment or order from which the appeal is taken.

b. Any rulings and/or findings of the trial court or administrative tribunal included in the judgment or order from which the appeal is taken.

c. Any application for rehearing filed pursuant to Utah Code Ann. ' 54-7-15 (if the appeal arises from an order of the Public Service Commission) or notice of claim filed pursuant to Utah Code Ann. ' 63-30-12 (if it arises from claims against the State or its employee acting within the scope of employment or under color of authority).

d. The notice of appeal and any order extending the time for the filing of a notice of appeal.

e. Any motions filed pursuant to Rules 50(b), 52(b), 54(b), or 59, Utah Rules of Civil Procedure, or Rule 24, Utah Rules of Criminal Procedure, and any orders disposing of such motions.

f. If the appellant is an inmate confined in an institution invoking rule 4(f), the notarized statement or written declaration required by rule 4(f), Utah Rules of Appellate Procedure.

DATED:

[*Signature of attorney or pro se party*]

_____

[*Name of attorney or pro se party*]

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Docketing Statement was mailed by first class mail this [date] to the following:
Opposing counsel's name and address

If the appeal arises from a crime charged as a felony or a juvenile court delinquency proceeding, include the following:

Utah Attorney General
Appeals Division
160 East 300 South
PO Box 140854
Salt Lake City, UT 84114-0854

If the appeal arises from a juvenile court child protection proceeding, include the following:

Utah Attorney General
Child Protection Division
160 East 300 South
PO BOX 140833
Salt Lake City, UT 84114-0833

Utah Rules of Juvenile Procedure
Rule 5. Definitions.
Terms in these rules have the same definitions as provided in Section 62A-7-101 and Section 78-3a-103 unless a different definition is given here. As used in these rules:

(a) AAbuse, neglect, and dependency@ refers to proceedings under Section 78-3a-301 et. seq. and 78-3a-401 et. seq.

(b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

~~(b)~~(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as "persons."

~~(c)~~(d) "Arraignment" means the hearing at which a minor is informed of the allegations and the minor's rights, and is given an opportunity to admit or deny the allegations.

~~(d)~~(e) "Court records" means all juvenile court legal records, all juvenile court social and probation records, and all other juvenile court records prepared, owned, received, or maintained by the court.

~~(e)~~(f) "Disposition" means any order of the court, after adjudication, pursuant to Section 78-3a-118.

~~(f)~~(g) "Petition" means the document containing the material facts and allegations upon which the court's jurisdiction is based.

~~(g)~~(h) "Preliminary inquiry" means an investigation and study conducted by the probation department upon the receipt of a referral to determine whether the interests of the public or of the minor require that further action be taken.

~~(h)~~(i) "Ungovernability" means the condition of a minor who is beyond the control of the parent/guardian, custodian or school authorities, to the extent that the minor's behavior or condition endangers the minor's own welfare or the welfare of others.

Rule 9. Detention hearings; scheduling; hearing procedure.

(a) The officer in charge of the detention facility shall provide to the court a copy of the report required by Section 78-3a-113. At a detention hearing, the court shall order the release of the minor to the parent, guardian or custodian unless there is reason to believe:

(1) the minor will abscond or be taken from the jurisdiction of the court unless detained;

(2) the offense alleged to have been committed ~~is of such a nature that it~~ would be a felony if committed by an adult;

(3) the minor's parent, guardian or custodian cannot be located;

(4) the minor's parent, guardian or custodian refuses to accept custody of the minor;

(5) the minor's parent, guardian or custodian will not produce the minor before the court at an appointed time;

(6) the minor will undertake witness intimidation;

(7) the minor's past record indicates the minor may be a threat to the public safety;

(8) the minor has problems of conduct or behavior so serious or the family relationships are so strained that the minor is likely to be involved in further delinquency; or

(9) the minor has failed to appear for a court hearing within the past twelve months.

(b) The court shall hold a detention hearing within 48 hours of the minor's admission to detention, weekends and holidays excluded. The officer in charge of the detention facility shall notify the minor, parent, guardian or custodian and attorney of the date, time, place and manner of such hearing.

(c) The court may at any time order the release of a minor whether a detention hearing is held or not.

(d) At the beginning of the detention hearing, the court shall advise all persons present as to the reasons or allegations giving rise to the minor's admission to detention and the limited scope and purpose of the hearing as set forth in paragraph (g). If the minor is to be arraigned at the detention hearing, the provisions of Rules 24 and 26 shall apply.

(e) The court may receive any information, including hearsay and opinion, that is relevant to the decision whether to detain or release the minor. Privileged communications may be introduced only in accordance with the Utah Rules of Evidence.

(f) A detention hearing may be held without the presence of the minor's parent, guardian or custodian if they fail to appear after receiving notice. The court may delay the hearing for up to 48 hours to permit the parent, guardian or custodian to be present or may proceed subject to the rights of the parent, guardian or custodian. The court may appoint counsel for the minor with or without the minor's request.

(g) If the court determines that no reasonable basis exists for the offense or condition alleged as required in Rule 6 as a basis for admission, it shall order the minor released immediately without restrictions. If the court determines that reasonable cause exists for continued detention, it may order continued detention, place the minor on home detention, or order the minor's release upon compliance with certain conditions pending further proceedings. Such conditions may include:

(1) a requirement that the minor remain in the physical care and custody of a parent, guardian, custodian or other suitable person;

(2) a restriction on the minor's travel, associations or residence during the period of the minor's release; and

(3) other requirements deemed reasonably necessary and consistent with the criteria for detaining the minor.

(h) If the court determines that a reasonable basis exists as to the offense or condition alleged as a basis for the minor's admission to detention but that the minor can be safely left in the care and custody of the parent, guardian or custodian present at the hearing, it may order release of the minor upon the promise of the minor and the parent, guardian or custodian to return to court for further proceedings when notified.

(i) If the court determines that the offense is one governed by Section 78-3a-601, Section 78-3a-602, or Section 78-3a-603, the court may by issuance of a warrant of arrest order the minor committed to the county jail in accordance with Section 62A-7-201.

(j) Any predisposition order of detention or home detention shall be reviewed by the court once every seven days. The court may, on its own motion or on the motion of any party, schedule a detention review hearing at any time.

ADVISORY COMMITTEE NOTE

Paragraph (j) of this Rule is a change to permit the court to review the detention order without waiting for a party to bring the issue to the court.

Rule 10. Bail for non-resident minors.

A nonresident minor taken into custody for an offense committed within the state whose continued detention is not required by the court under Rule 9 may be required to post bail as a condition of release pending arraignment or subsequent court proceedings. The judge, commissioner, or other court officer authorized in writing may issue an order admitting the minor to bail and setting the amount of bail. All subsequent matters pertaining to the posting of the bail and any forfeiture shall be governed by ~~' 77-20-2~~ 77-20-1 et seq. and ~~' 77-20a-1~~ 77-20b-101 et seq.

Rule 18. Summons; service of process; notice.

(a) Summons. Upon the filing of a petition, the clerk, unless otherwise directed by the court, shall schedule an initial hearing in the case.

(1) Summons may be issued by the prosecuting attorney. If the prosecuting attorney does not issue a summons, summons shall be issued by the clerk in accordance with Section ~~78-3a-505.~~ 78-3a-110. The summons shall conform to the format prescribed by these rules.

(2) Content of the summons.
(A) Abuse, neglect, and dependency cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall state the time within which the respondent is required to answer the petition, and shall notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It shall also contain an abbreviated reference to the substance of the petition.
(B) Other cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall also contain an abbreviated reference to the substance of the petition. In proceedings against an adult pursuant to Section 78-3a-801, the summons shall conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.
(3) The summons shall be directed to the person or persons who have physical care, control or custody of the minor and require them to appear and bring the minor before the court. If the person so summoned is not the parent, guardian or custodian of the minor, a summons shall also be issued to the parent, guardian or custodian. If the minor or person who is the subject of the petition has been emancipated by marriage or is 18 years of age or older at the time the petition is filed, the summons may require the appearance of the minor only, unless otherwise ordered by the court. In neglect, abuse and dependency cases, unless otherwise directed by the court, the summons shall not require the appearance of the subject minor.
(4) No summons shall be necessary as to any party who appears voluntarily or who files a written waiver of service with the clerk prior to or upon appearance at the hearing.
(b) Service.
(1) Except as otherwise provided by these rules or by statute, service of process and proof of service shall be made by the methods provided in Utah Rule of Civil Procedure 4. Service of process shall be made by the sheriff of the county where the service is to be made, by a deputy, by a process server, or by any other suitable person appointed by the court. However, when the court so directs, an agent of the Department of Human Services may serve process in a case in which the Department is a party. A party or party-s attorney may serve another party at a court hearing. The record of the proceeding shall reflect the service of the document and shall constitute the proof of service.
(2) Personal service may be made upon a parent, guardian or custodian and upon a minor in that person's legal custody by delivering to a parent, guardian or custodian a copy of the summons with a copy of the petition attached. If a minor is in the legal custody or guardianship of an agency or person other than a parent, service shall also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice shall be given to the parent as provided in paragraph (d). Service upon a minor who has attained majority by marriage as provided in Utah Code Ann. ' 15-2-1 or upon court order shall be made in the manner provided in the Utah Rules of Civil Procedure.
(3) (A) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt.
(B) Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who

appears in court in response to mailed service shall be considered to have been legally served.
(4) In any proceeding wherein the parent, guardian or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Section 78-3a-603 and in proceedings seeking permanent termination of parental rights, the court shall order service upon the parent, guardian or custodian by publication. Any rehearing shall be requested by written motion.
(5) Service shall be completed at least 48 hours prior to the hearing. If the summons is for the permanent termination of parental rights, service shall be completed at least ten days before the hearing.
(c) Service by publication. Service by publication shall be authorized by the procedure and in the form provided by Utah Rule of Civil Procedure 4.
(d) Notice.
(1) Notice of the time, date and place of any further proceedings, after an initial appearance or service of summons, may be given in open court or by mail to any party. Notice shall be sufficient if the clerk deposits the notice in the United States mail, postage pre-paid, to the address provided by the party in court or the address at which the party was initially served.
(2) Notice for any party represented by counsel shall be given to counsel for the party. e) Additional parties. Whenever it appears to the court that a person who is not the parent, guardian or custodian should be made subject to the jurisdiction and authority of the court in a minor's case, upon the motion of any party or the court's own motion, the court may issue a summons ordering such person to appear. Upon the appearance of such person, the court may enter an order making such person a party to the proceeding and may order such person to comply with reasonable conditions as a part of the disposition in the minor's case. Upon the request of such person, the court shall conduct a hearing upon the issue of whether such person should be made a party.
ADVISORY COMMITTEE NOTE
The present law is silent on the matter of service on the minor who is the subject of a petition. This rule continues the current practice of requiring service only on the parent, guardian or custodian having legal custody.

Rule 20A. Discovery in non-delinquency proceedings.

(a) Scope of discovery. The scope of discovery is governed by Utah R. Civ. P. 26(b)(1). Unless ordered by the court, no discovery obligation may be imposed upon a minor.
(b) Disclosures. Within 14 days of the answer, a party shall, without awaiting a discovery request, make reasonable efforts to provide to other parties information necessary to support its claims or defenses, unless solely for impeachment or unless the identity of a person is protected by statute, identifying the subjects of the information. <u>If a party is aware that additional records exist, the party shall inform the other to seek access of the additional records from the person or agency that created the records.</u>
(c) Depositions upon oral examination. After the filing of the answer, a party may take the testimony of any person, including a party, by deposition upon oral examination without leave of the court. The attendance of witnesses may be compelled by subpoena as provided in Utah R. Civ. P. 45. Depositions shall be conducted pursuant to Utah R.

Civ. P. 30(b), (c), (d), and (g). The record of the deposition shall be prepared pursuant to Utah R. Civ. P. 30(e) and (f) except the deponent will have seven days to review the transcript or recording under Utah R. Civ. P. 30(e). The use of depositions in court proceedings shall be governed by Utah R. Civ. P. 32.

(d) Interrogatories. After the filing of the answer, interrogatories may be used pursuant to Utah R. Civ. P. 33 except all answers shall be served within 14 days after service of the interrogatories.

(e) Production of documents and things. After the filing of the answer, requests for production of documents may be used pursuant to Utah R. Civ. P. 34 except all responses shall be served within 14 days after service of the requests.

(f) Physical and mental examination of persons. Physical and mental examinations may be conducted pursuant to Utah R. Civ. P. 35.

(g) Requests for admission. Except as modified in this paragraph, requests for admission may be used pursuant to Utah R. Civ. P. 36. The matter shall be deemed admitted unless, within 14 days after service of the request, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter, signed by the party or by his attorney. Upon a showing of good cause, any matter deemed admitted may be withdrawn or amended upon the court's own motion or the motion of any party. Requests for admission can be served anytime following the filing of the answer.

(h) Experts.

(1) Adjudication trials. Any person who has been identified as an expert whose opinions may be presented at the adjudication trial must be disclosed by the party intending to present the witness at least ten days prior to the trial or hearing unless modified by the court. If ordered by the court, a summary of the proposed testimony signed by the party or the party's attorney shall be filed at the same time.

(2) Termination of parental rights trials. Any person who has been identified as an expert whose opinions may be presented at the termination of parental rights trial must be disclosed by the party intending to present the witness at least thirty days prior to the trial or hearing unless modified by the court. Unless an expert report has been provided, a summary of the proposed testimony signed by the party or the party's attorney shall be filed at the same time.

(3) A party may not present the testimony of an expert witness without complying with this paragraph (h) unless the court determines that good cause existed for the failure to disclose or to provide the summary of proposed testimony.

(i) Protective orders. Any party or person from whom discovery is sought may request a protective order pursuant to Utah R. Civ. P. 26(c).

(j) Supplementation of responses. Parties have a duty to supplement responses and disclosures pursuant to Utah R. Civ. P. 26(e).

(k) Failure to cooperate in discovery. As applicable, failure to cooperate with discovery shall be governed by Utah R. Civ. P. 37.

(l) No discovery can be taken that will interfere with the statutorily imposed time frames.

Rule 24. Arraignment.

(a) An arraignment shall be held within 30 days from the filing of the petition, or within 10 days if the minor is held in detention, unless otherwise ordered by the court for good cause shown.

(b) At the arraignment the court shall inform the minor and the minor's parent, guardian or custodian:

(1) of their right to further time, unless waived, if service was not accomplished as provided in Rule 18;

(2) of the nature and elements of each allegation contained in the petition;

(3) of their right to retain counsel, or if indigent, to have counsel appointed by the court;

(4) of their right to a reasonable time to consult with counsel before entering a plea;

(5) of the minor's right against self- incrimination; and

(6) that the state has the burden to prove the allegations of the petition beyond a reasonable doubt.

(c) After providing the information set forth in paragraph (b) and ascertaining that all necessary parties are present, the court shall call upon the minor to admit or deny the truth of the allegations by plea.

ADVISORY COMMITTEE NOTE

This rule should not be interpreted as establishing or limiting any rights. The rights noted in this rule are established by statute, constitution, or caselaw. The purpose of this rule is ~~to report these rights in a single forum and~~ to require that the parties be advised of their rights.

Rule 25. Pleas.

(a) A minor may tender a denial of the alleged offense, may tender an admission of the alleged offense, or may, with the consent of the court, tender a plea of no contest which shall have the effect set forth in Utah Code ' 77-13-2. If the minor declines to plead, the court shall enter a denial. Counsel for the minor may enter a denial in the absence of the minor, parent, guardian or custodian.

(b) When denial is entered, the court shall set the matter for a trial hearing or for a pre-trial conference.

(c) The court may refuse to accept an admission or a plea of no contest and may not accept such plea until the court has found:

(1) that the right to counsel has been knowingly waived if the minor is not represented by counsel;

(2) that the plea is voluntarily made;

(3) that the minor and, if present, the minor's parent, guardian, or custodian, have been advised of, and the minor has knowingly waived, the right against compulsory self-incrimination, the right to trial, the right to confront and cross-examine opposing witnesses, the right to testify and to have process for the attendance of witnesses;

(4) that the minor and, if present, the minor's parent, guardian, or custodian have been advised of the consequences which may be imposed after acceptance of the plea of guilty or no contest;

(5) that there is a factual basis for the plea; and

(6) where applicable, the provisions of paragraph (e) have been met.

(d) The minor may be allowed to tender an admission to a lesser included offense, or an offense of a lesser degree or a different offense which the court may enter, after amending the petition.

(e) Plea discussions and agreements are authorized in conformity with the provisions of Utah Rule of Criminal Procedure 11. The prosecuting attorney may enter into

discussions and reach a proposed plea agreement with the minor through the minor's counsel, or if the minor is not represented by counsel, directly with the minor. However, the prosecuting attorney may not enter into settlement discussions with a minor not represented by counsel unless the parent, guardian or custodian is advised of the discussion and given the opportunity to be present.

(f) A minor may tender an admission which is not entered by the court for a stated period of time. Conditions may be imposed upon the minor in that period of time and successful completion of the conditions set shall result in dismissal upon motion. If the minor fails to complete the conditions set, the admission shall be entered and the court shall proceed to order appropriate dispositions.

ADVISORY COMMITTEE NOTE

This rule should not be interpreted as establishing or limiting any rights. The rights noted in this rule are established by statute, constitution, or caselaw. The purpose of this rule is ~~to report these rights in a single forum and~~ to require that the parties be advised of their rights.

Rule 26. Rights of minors in delinquency proceedings.

(a) A minor who is the subject of a delinquency petition filed pursuant to Section 78-3a-104 shall be advised of the following rights:

(1) to appear in person and to defend in person or by counsel;

(2) to receive a copy of the petition which contains the allegations against the minor;

(3) to testify in the minor's own behalf;

(4) to be confronted by the witnesses against the minor;

(5) to have compulsory process to ensure the attendance of witnesses in the minor's behalf;

(6) to be represented by counsel at all stages of the proceedings and if indigent, to have appointed counsel;

(7) to remain silent and to be advised that anything the minor says can and will be used against the minor in any court proceedings; and

(8) to appeal any adjudication against the minor in the manner provided by law.

(b) If the minor or the minor's parent, guardian or custodian is found to be indigent and request counsel, the court shall appoint counsel at public expense in the manner provided by law. Where necessary to protect the interest of the minor, the court may appoint counsel without the request of the minor or parent, guardian or custodian.

(c) If the parent, guardian or custodian of a minor is found not to be indigent, but does not or will not retain counsel for the minor and the minor has no means to retain counsel, the court may appoint counsel at public expense. However, the court may order, after giving the parent, guardian or custodian reasonable opportunity to be heard, that the parent, guardian or custodian reimburse the county for the cost of appointed counsel, in whole or in part, depending on ability to pay.

(d) Parties other than the minor have the right to be represented by counsel retained by them and to participate as provided in these rules.

(e) A minor 14 years of age and older is presumed capable of intelligently comprehending and waiving the minor's right to counsel as above and may do so where the court finds such waiver to be knowing and voluntary, whether the minor's parent, guardian or custodian is present. A minor under 14 years of age may not waive such rights outside of the presence of the minor's parent, guardian or custodian.

ADVISORY COMMITTEE NOTE

This rule should not be interpreted as establishing or limiting any rights. The rights noted in this rule are established by statute, constitution, or caselaw. The purpose of this rule is ~~to report these rights in a single forum and~~ to require that the parties be advised of their rights.

Rule 27A. Admissibility of Statements Given by Minors.

(a) If a minor is in custody for the alleged commission of an offense that would be a crime if committed by an adult, any statement given by a minor in response to questions asked by a police officer is inadmissible unless the police officer informed the minor of the minor=s rights before questioning begins.

(1) If the minor is under 14 years of age, the minor is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a minor=s rights unless a parent, guardian, or legal custodian is present during waiver.

(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor=s rights without the benefit of having a parent, guardian, or legal custodian present during questioning.

(b) The presumptions outlined in paragraphs (a)(1) and (a)(2) may be overcome by a preponderance of the evidence showing the ability or inability of a minor to comprehend and waive the minor=s rights.

Advisory Committee Note. This rule is intended to recognize the right to counsel, and the right against self-incrimination as established by statute, constitution, or caselaw.

~~The word Arights@ as used in this rule refers to the rights under *Miranda v. Arizona*. This rule is not intended to allow admission of statements that are otherwise inadmissible under the applicable rules of evidence.~~

Rule 30. Citations; applicable offenses and procedures; bail.

(a) A citation issued pursuant to Section 78-3a-503 shall be sufficient to invoke the jurisdiction of the court in any offense listed in that section.

(b) Procedure. Whenever a citation is issued pursuant to Section 78-3a-503, a copy of the citation filed with the court may be used in lieu of a petition upon which the minor may appear and admit the offense, upon which the court may make a disposition, or upon which the court may accept bail in lieu of appearance. If the minor fails to appear on a citation or fails to tender the fine as bail in cases where bail is permitted in lieu of appearance, a petition or order to show cause may be filed and further proceedings held as provided in these rules.

(c) Where a citation has been filed with the court for an offense, the minor cited shall be allowed to post bail without further court appearance except as provided in this rule.

(d) The bail amount for each such offense shall be included in a written notice of bailable offenses in accordance with the bail/fine schedule approved by the Judicial Council. The bail amount may immediately be forfeited as a fine and shall be deemed a conviction of the offense charged if the notice has been given to the cited minor and the notice advises the minor and the minor's parent, guardian or custodian that payment of the fine constitutes an admission of guilt.

(e) A juvenile court district may, or where required by statute shall, designate repeat offenses for which an appearance or additional bail is required.

ADVISORY COMMITTEE NOTE

~~Sections~~ Section 78-3a-503 ~~and 78-3a-509 permit~~ permits a minor who has been issued a citation to forfeit bail and to thereby waive the filing of a petition and plead guilty.

Rule 38. Prosecution of adults.

(a) All cases in which the juvenile court has jurisdiction over a criminal offense committed by an adult shall be commenced by an information filed by the prosecuting attorney of the county where the offense is alleged to have occurred. The information and all court proceedings shall be in accordance with the Utah Rules of Criminal Procedure, except that a jury shall consist of four persons. If a jury trial is demanded by the defendant, the court may transfer the case to a district court.

(b) The court may permit diversion of an adult criminal offense pursuant to Utah Code Ann. ' ~~77-2-2~~ 77-2-1 et seq. upon recommendation of the prosecuting attorney.

Rule 47. Reviews and modification of orders.

(a) Reviews.

(1) At the time of disposition in any case wherein a minor is placed on probation, under protective supervision or in the legal custody of an individual or agency, the court shall also order that the individual supervising the youth or the placement, submit a written report to the court at a future date and appear personally, if directed by the court, for the purpose of a court review of the case. If a date certain is not scheduled at the time of disposition, notice by mail of such review shall be given by ~~the petitioner, if the review is a mandatory review, or by~~ the party requesting the review ~~to the supervising agency~~ not less than 5 days prior to the review. Such notice shall also be given to the guardian ad litem, if one was appointed.

(2) No modification of a prior dispositional order shall be made at a report review that would have the effect of further restricting the rights of the parent, guardian, custodian or minor, unless the affected parent, guardian custodian or minor waives the right to a hearing and stipulates in open court or in writing to the modification. If a guardian ad litem is representing the minor, the court shall give a copy of the report to the guardian prior to the report review.

(b) Review hearings.

(1) Any party in a case subject to review may request a review hearing. The request must be in writing and the request shall set forth the facts believed by the requesting party to warrant a review by the court. If the court determines that the alleged facts, if true, would justify a modification of the dispositional order, a review hearing shall be scheduled with notice, including a copy of the request, to all other parties. The court may schedule a review hearing on its own motion.

(2) The court may modify a prior dispositional order in a review hearing upon the stipulation of all parties and upon a finding by the court that such modification would not be contrary to the best interest of the minor and the public.

(3) The court shall not modify a prior order in a review hearing that would further restrict the rights of the parent, guardian, custodian or minor if the modification is objected to by any party prior to or in the review hearing. The court shall schedule the case for an evidentiary hearing and require that a motion for modification be filed with notice to all parties in accordance with Section 78-3a-903.

(c) Disposition reviews. Upon the petition of any agency, individual or institution vested with legal custody or guardianship by prior court order, the court shall conduct a review

hearing to determine if the prior order should remain in effect. Notice of the hearing, along with a copy of the petition, must be provided to all parties not less than 5 days prior to the hearing.

(d) Review of a case involving abuse, neglect, or dependency of a minor shall be conducted also in accordance with Section 78-3a-118, Section 78-3a-312, and Section 78-3a-313.

Rule 48. New hearings.

(a) New hearings shall be available in accordance with Utah R. Civ. P. 52, 59 and 60.

(b) ~~Proceedings on a motion for~~ If a new hearing ~~shall be governed by the same rules of evidence and procedure, and~~ is granted, the same burden of proof ~~as the original adjudicatory hearing.~~ shall apply.

Rule 50. Presence at hearings.

(a) In abuse, neglect, and dependency cases the court shall exclude all persons who do not have a direct interest in the proceedings.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present.

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(1) the minor has been charged with an offense which would be a felony if committed by an adult; or

(2) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) If any person, after having been warned, engages in conduct which disrupts the court, the person may be excluded from the courtroom. Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. Counsel for the excluded person has the right to remain and participate in the hearing.

(e) Videotaping, photographing or recording court proceedings shall be as authorized by ~~the Code of Judicial Conduct and~~ the Code of Judicial Administration.

Utah Code of Judicial Administration

Rule 3-201.02. Court Commissioner Conduct Committee.

(*Amendment approved effective October 22, 2001 pursuant to Rule 2-205).*

Intent:

To establish a procedure for the review of complaints filed against court commissioners.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) Court Commissioner Conduct Committee.

(A) The Council shall appoint a committee of three judges and two lawyers to investigate formal complaints against court commissioners. The Council shall designate one member as chair. The judges shall reside in different judicial districts from each other. The lawyers shall reside in different judicial districts from each other.

(B) Committee members shall not be Council members. Committee members shall serve ~~three~~ six year terms of office. The terms of office shall be staggered so that no more than two expire in one year.
(C) Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action. If the chair is recused, a majority of the remaining members shall select a chair pro tempore. The chair shall replace a recused member with a judge or lawyer of the same judicial district as the recused member. The composition of the Committee shall remain as provided in paragraph (1)(A).
(2) Informal complaint. An informal complaint against a court commissioner may be filed with the presiding judge of the court the court commissioner serves. The presiding judge shall conduct such investigation and take such corrective action as warranted by the complaint.
(3) Formal complaint.
(A) A formal complaint against a court commissioner shall be in writing and filed with the presiding officer of the Council. The presiding officer shall refer the complaint to the committee and provide a copy of the complaint to the court commissioner and to the presiding judge of the court the commissioner serves.
(B) All proceedings and materials related to a formal complaint shall be kept confidential.
(C) The chair or the committee shall dismiss a frivolous complaint. The chair or the committee shall dismiss a complaint found to raise only issues of law or fact for which a remedy is the review of the case by the trial court judge or by an appellate court. The chair of the committee shall provide notice of and basis for the dismissal to the complainant, the presiding judge and the commissioner.
(D) The committee may investigate a complaint that is not dismissed under paragraph (3)(C). This investigation shall be conducted to determine whether dismissal or a hearing is appropriate.
(E) The committee may request that the state court administrator appoint a staff person within the administrative office to perform any investigation and make any presentations to the Committee or the Council.
(F) Hearings of the Court Commissioner Conduct Committee.
(i) The hearings of the committee shall be closed to the public. The committee shall interview the complainant, the court commissioner, and any witnesses determined to have relevant information. The commissioner has the right to testify. The commissioner and complainant may be present at any hearing of the committee and have the assistance of counsel. The commissioner may present and examine and cross-examine witnesses. Testimony shall be presented under oath and a record of the proceedings maintained. The commissioner may obtain a copy of the record upon payment of any required fee.
(ii) The committee shall make written findings concerning the merits of the complaint and provide a copy of the findings to the complainant, the court commissioner, and the presiding judges of the court the commissioner serves.
(G) If the committee finds the complaint to have merit, the committee shall recommend to the Council that a sanction be imposed under CJA Rule 3-201(6). The committee shall dismiss any complaint found to be without merit.
(H) Council review.

(i) Complaints dismissed without a hearing. The chair of the committee shall report to the Council not less than annually on the committee's work including a general description of any complaint dismissed without a hearing.
(ii) Complaints with a committee hearing.
(a) The Council shall review the record of the committee hearing to determine the correct application of procedures and to determine the sanction to be imposed.
(b) The complainant, commissioner or presiding judges of the districts the commissioner serves shall file any objections to the committee's findings in writing with the Council.
No person is entitled to attend the Council meeting at which the complaint is reviewed.

Rule 4-202.08. Fees for records, information, and services.

Intent: To establish uniform fees for requests for records, information, and services.
Applicability: This rule applies to all courts of record and not of record and to the Administrative Office of the Courts.
Statement of the Rule:
(1) Fees payable. Fees are payable to the court or office that provides the record, information, or service at the time the record, information, or service is provided. The initial and monthly subscription fee for public on-line services is due in advance. The connect-time fee is due upon receipt of an invoice. If a public on-line services account is more than 60 days overdue, the subscription may be terminated. If a subscription is terminated for nonpayment, the subscription will be reinstated only upon payment of past due amounts and a reconnect fee equal to the subscription fee.
(2) Use of fees. Fees received are credited to the court or office providing the record, information, or service in the account from which expenditures were made. Fees for public on-line services are credited to the Administrative Office of the Courts to improve data quality control, information services, and information technology.
(3) Copies. Copies are made of court records only. The term "copies" includes the original production. Fees for copies are based on the number of record sources to be copied and are as follows:
(A) paper except as provided in (H): $.25 per sheet;
(B) microfiche: $1.00 per card;
(C) audio tape: ~~$5.00~~ $10.00 per tape;
(D) video tape: $15.00 per tape;
(E) floppy disk or compact disk other than of court hearings: $10.00 per disk;
~~(E) floppy disk of~~ (F) electronic copy of court reporter stenographic text: $25.00 for each one-half day of testimony or part thereof;
~~(F) for any other floppy disk: $15.00 per disk~~;
(G) electronic copy of audio record or video record of court proceeding: $10.00 for each one-half day of testimony or part thereof; and
~~(G) compact disk: $40.00 per disk; and~~
(H) pre-printed forms and associated information: an amount for each packet established by the state court administrator.
(4) Mailing. The fee for mailing is the actual cost. The fee for mailing shall include necessary transmittal between courts or offices for which a public or private carrier is used.
(5) Personnel time. There is no fee for personnel time to copy ~~an audio tape or video tape~~ the record of a court proceeding. There is no fee for the first 15 minutes of personnel

time. The fee for time beyond the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for personnel time is charged at the following rates for the least expensive group capable of providing the record, information, or service:
(A) clerical assistant: ~~$13.00~~ $15.00 per hour;
(B) technician: ~~$15.00~~ $22.00 per hour;
(C) senior clerical: $21.00 per hour
(D) programmer/analyst: ~~$21.00~~ $32.00 per hour;
(E) manager: ~~$33.00~~ $37.00 per hour; and
(F) consultant: actual cost as billed by the consultant.
(6) Public on-line services. The fee for public on-line services shall be as follows:
(A) a set-up fee of $25.00;
(B) a subscription fee of $30.00 per month for any portion of a calendar month; and
(C) $.10 per minute of connect-time greater than 120 minutes during a billing cycle.
(7) No interference. Records, information, and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts. The Administrative Office of the Courts may disconnect a user of public on-line services whose use interferes with computer performance or access by other users. The Administrative Office of the Courts may establish reasonable time limits per access call to promote access by a variety of users.
(8) Waiver of fees.
(A) Fees established by this rule shall be waived for:
(i) any government entity required by law to obtain court records; or
(ii) any person who is the subject of the record and who is impecunious.
(B) Fees established by this rule may be waived for a student engaged in research for an academic purpose.
(C) Fees established by this rule may be waived for a governmental entity if the fee is minimal.

Rule 4-505.01. Awards of attorney fees in civil default judgments with a principal amount of $5,000 or less.
Intent:
To provide for uniformity in awards of attorney fees in civil default judgments with a principal damages amount of $5,000 or less.
To provide for notice of the amount of attorney fees that may be awarded in the event of default.
Applicability:
This rule shall govern awards of attorney fees in civil default judgments with a principal damages amount of $5,000 or less in which the claimant elects to seek an award of attorney fees pursuant to this rule.
Statement of the Rule:
(1) When reasonable attorney fees are provided for by contract or statute and the claimant elects to seek an award of attorney fees pursuant to this rule, such fees shall be computed as follows:

Principal Amount of ~~Judgment~~ Damages, Exclusive of Costs and Interest:	and: Attorney Fees

Between		Allowed
$0.00	$700.00	$150.00
700.01	900.00	175.00
900.01	1,000.00	200.00
1,000.01	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	5,000.00	775.00

(2) Reference to this rule and the amount of attorney fees allowed pursuant to paragraph (1) shall be stated with particularity in the body or prayer of the complaint.
(3) When a statute provides the basis for the award of attorney fees, reference to the statutory authority shall be included in the complaint.
(4) Clerks may enter civil default judgments which include attorney fees awarded pursuant to this rule.
(5) Attorney fees awarded pursuant to this rule may be augmented after judgment pursuant to Rule 4-505. When the court considers a motion for augmentation of attorney fees awarded pursuant to this rule, it shall consider the attorney time spent prior to the entry of judgment, the amount of attorney fees included in the judgment, and the statements contained in the affidavit supporting the motion for augmentation.
(6) Prior to entry of a judgment which grants attorney fees pursuant to this rule, any party may move the court to depart from the fees allowed by paragraph (1) of this rule. Such application shall be made pursuant to Rule 4-505.
(7) If a contract or other document provides for an award of attorney fees, an original or copy of the document shall be made a part of the file before attorney fees may be awarded pursuant to this rule.
(8) No affidavit for attorney fees need be filed in order to receive an award of attorney fees pursuant to this rule.
(9) No attorney fees awarded pursuant to this rule, nor portion thereof, may be shared in violation of Rule of Professional Conduct 5.4.

Rule 4-510. Alternative dispute resolution.

Intent:

To establish a program of court-annexed alternative dispute resolution for civil cases in the District Courts.

Applicability:

These rules shall apply to cases filed in the District Court in the Second, Third and Fourth Judicial Districts. The rules do not apply to: actions brought by or through the Office of Recovery Services under Title 26, Chapter 19, Medical Benefits Recovery Act, Title 62A, Chapter 11, Recovery Services, Title 78, Chapter 45, Uniform Civil Liability for Support Act, and Title 78, Chapter 45a, Uniform Act on Paternity, or to; actions brought under Chapters 3a, 6, 36, and 45c of Title 78, Chapter 6 of Title 30, Chapter 12 of Title 62A, Chapter 20a of Title 77, Rules 64 and 65 of the Utah Rules of Civil Procedure,

temporary orders requested under Title 30, or to; uncontested matters brought under Chapter 1 of Title 42, Title 75, and Chapters 22a, 30 and 41 of Title 78; or actions pursued by an assignee of a claim.
Statement of the Rule:
(1) Definitions.
(A) AADR@ means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by this rule and URCADR;
(B) AADR program@ means the alternative dispute resolution program described in Chapter 31b, Title 78;
(C) ABinding arbitration@ means an ADR proceeding in which the award is final and enforceable as any other judgment in a civil action unless vacated or modified by a court pursuant to statute, and in which the award is not subject to a demand for a trial de novo;
(D) ACollaborative Law@ is a process in which the parties and their counsel agree in writing to use their best efforts and make a good faith effort to resolve their divorce, paternity, or annulment action by agreement without resorting to judicial intervention except to have the court approve the settlement agreement and sign orders required by law to effectuate the agreement of the parties. The parties= counsel may not serve thereafter as litigation counsel except to obtain court approval of the settlement agreement
(E) ADirector@ means the Director of Dispute Resolution Programs;
(F) AMaster Mediator@ means a provider who has completed 300 hours in conducting mediation sessions documented as required by the director. A master mediator may also act as a "Primary Trainer."
(G) ANonbinding arbitration@ means an ADR proceeding in which the award is subject to a trial de novo as provided in Utah Code Ann. '' 78-31b-6(2);
(H) APrimary Trainer@ means a provider who qualifies as a AMaster Mediator@ on the court roster and may oversee mediation training that fulfills the court's 30 hour mediator training requirement for the roster.
(I) ARoster@ means the list of those persons qualified to provide services under the ADR program, and includes the information supplied by such persons pursuant to paragraph (3)(A)(i) of this rule;
(J) AURCADR@ or AUtah Rules of Court-Annexed Alternative Dispute Resolution@ means the rules adopted by the Utah Supreme Court which govern the ADR program.
(2) Responsibilities of the Director. The Director shall:
(A) have general responsibility for the administration of the ADR program;
(B) annually prepare and submit the report required by Utah Code Ann. '' 78-31b-4(5);
(C) establish and maintain the roster, and provide copies of the roster upon request;
(D) prepare model forms for use by the courts, counsel and parties under these rules, and provide copies of the forms upon request; and
(E) establish procedures for the review and evaluation of the ADR program and the performance of ADR providers.
(3) Qualification of providers.
(A) To be eligible for the roster, an applicant must:
(i) submit a written application to the Director setting forth:

(a) a description of how the applicant meets, or will meet within a reasonable time, the requirements specified in paragraph (3)(B)(i), if applicable;
(b) the major areas of specialization and experience of the applicant, such as real estate, estates, trusts and probate, family law, personal injury or property damage, securities, taxation, civil rights and discrimination, consumer claims, construction and building contracts, corporate and business organizations, environmental law, labor law, natural resources, business transactions/commercial law, administrative law and financial institutions law;
(c) the maximum fees the applicant will charge for service as a provider under the ADR program; and
(d) the judicial districts in which the applicant is offering to provide services and the location and a description of the facilities in which the applicant intends to conduct the ADR proceedings;
(ii) agree to complete and annually complete up to six hours of ADR training as required and offered by the Judicial Council;
(iii) submit an annual report to the Director indicating the number of mediations and arbitrations the ADR provider has conducted that year; and
(iv) be recertified annually.
(B) To be included on the roster as a mediator, the provider must also:
(i) have successfully completed at least 30 hours of formal mediation training and 10 hours of experience in either conducting mediations or observing a qualified mediator conduct mediations, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;
(ii) successfully pass an examination on the Code of Ethics for ADR providers;
(iii) agree to conduct at least three pro bono mediations each year as referred by the Director.
(iv) be of good moral character in that the provider has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other serious crime, and has not received professional sanctions that, when considered in light of the duties and responsibilities of an ADR provider, are determined by the Director to indicate that the best interests of the public are not served by including the provider on the roster; and
(C) to be included on the roster as a Master Mediator, the provider must also:
(i) have completed 300 hours in conducting mediation sessions.
(D) To be included on the roster as an arbitrator, the provider must also:
(i) have been a member in good standing of the Utah State Bar for at least ten years, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;
(ii) be of good moral character in that the provider has not been convicted of a felony, a misdemeanor involving moral turpitude, or any serious other crime, and has not received professional sanctions that, when considered in light of the duties and responsibilities of an ADR provider, are determined by the Director to indicate that the best interests of the public are not served by including the provider on the roster; and
(iii) agree to conduct at least one pro bono arbitration each year as referred by the Director.

(E) To be recertified as a mediator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least six mediation sessions, or conducted 24 hours of mediation, during the previous year.
(F) To be recertified as an arbitrator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least three arbitrations, or conducted 12 hours of arbitration, during the previous year.
(G) A provider may be removed or excluded from the roster by the director for failure to comply with the code of ethics for ADR providers as adopted by the Supreme Court or for failure to meet the requirements of this rule. The director shall notify the provider in writing of the director's intent to remove the provider from the roster. If the provider seeks to challenge the removal, the provider must notify the director within 10 days of receipt of the notification. The provider may request reconsideration by the director or a hearing by the Judicial Council's ad hoc committee on ADR. The decision of the committee is final.
(4) Responsibilities of the Administrative Office of the Courts.
(A) The Administrative Office shall establish or qualify programs for the education and training of ADR providers, attorneys, and judges in the applicable judicial districts of this State as to the purposes and operation of, and the rules governing, the ADR program. Any trainer or training program seeking to offer a mediator training program that fulfills the Court's 30 hour mediator training requirement must abide by the following:
(i) Course content requirements:
(a) Submission of training materials. When applying for certification and renewal, training programs shall provide the ADR Office at the AOC with all training materials which will be used in the training program. These materials shall include, but are not limited to, the following: the training manual that is given to the participants including the required readings; all exercises and handouts. Revisions, deletions and/or additions to the previously approved training materials must be reported to the Office prior to conducting any course.
(b) ADR syllabus approval. In addition to submission of training materials, each training program must seek approval of its syllabus from the Office 20 working days in advance of each offering of a certified mediation training program. The syllabus shall be reviewed by the Office for compliance with the training standards. The syllabus must be to submitted in a format that easily identifies the presentation topic, the trainer(s) for each topic, the time allotted to each topic, any training activities, and the inclusion of the break times. The Office shall notify the trainer or training program of any deficiencies no later than 10 working days before the program is to be offered. Any deficiencies in the program syllabus shall be corrected prior to the commencement of the training program.
(c) Readings. All training programs must provide the participants with copies of Rule 4-510 UCJA, Rule 104 (the ethical code), and UCA 78-31-b-i-et seq. Time spent reading the required materials may not count towards the required number of hours of training and can be completed by participants at times when the training program is not being conducted. Trainers shall incorporate in this program some method of ensuring that the required readings are completed.
(d) Ethics Training. Training programs shall review with participants Rule 104 Code of Ethics for ADR Providers. In addition, ethics shall be woven throughout the program.
(ii) Training Methodology:

(a) Pedagogy. The program shall include, but is not limited to, the following: lecture, group discussion, written exercises, mediation simulations and role plays. In addition, outside readings should be provided by the trainer to supplement the training.
(b) Mediation Demonstration. All training programs shall present a role play mediation simulation (either live or by video) prior to the participant's role play experience as the mediator.
(iii) Trainer Qualifications:
(a) Training programs shall employ a primary trainer who meets the applicable qualifications outlined below and who have been approved by the Office. In order to be approved as a primary trainer, a trainer must demonstrate the following qualifications:
(I) Successful completion of a minimum of 30 hours of mediation training.
(II) Participation in a minimum of 200 hours of mediation acting as the mediator.
(III) Completion of 6 hours of continuing mediator education in the last year.
(IV) Primary trainers are approved for a three (3) year period.
(V) A primary trainer must be in attendance during the entire training program. It is preferable that a single primary trainer fulfill this obligation, but it is permissible that this be accomplished by more than one primary trainer.
(iv) Participant attendance: Participants must complete their training requirement by attending one entire program. The primary trainer is responsible for ensuring that the approved syllabus is complied with. Under no circumstances may a participant be excused from attending portions of the training; any portion of training missed shall be made up as directed by the primary trainer. (B) The Administrative Office shall prepare a videotape demonstrating the use of ADR and the application of this rule and the URCADR to the ADR program. The videotape shall include information as to the differences between mediation and arbitration, and the different procedures and the different effects of an award between nonbinding and binding arbitration. Sufficient copies of the videotape shall be available for use as required by paragraph (6)(A)(i) of this rule, and for the purchase or rental by members of the Bar and other persons interested in the ADR program.
(5) Referral of civil actions pending on January 1, 1995. Any party may file a motion that the case or any unresolved or specified issues therein be referred to the ADR program. If the motion is granted, the matter shall proceed pursuant to the URCADR.
(6) Referral of civil actions filed after January 1, 1995.
(A) All cases subject to this rule shall be referred to the ADR program, pursuant to this rule and URCADR, upon the filing of a responsive pleading unless the parties have participated in a collaborative law process. The matter will proceed to mediation 30 days after the filing of the responsive pleading unless one of the following occurs:
(i) One or more parties file with the clerk a statement asking the court to defer ADR consideration until a later date. The statement shall be signed by both counsel and the party and shall state that counsel and the party have reviewed the ADR videotape and have discussed proceeding under the ADR program, but have determined that participation in ADR should be deferred. If participation in the ADR program is deferred in a divorce, paternity or annulment action, the case shall proceed to mediation within 90 days of the filing of an answer unless good cause is shown why mediation should not occur. If participation in the ADR program is deferred, in other cases, the court and parties are required to address the usefulness of mediation or arbitration in resolving the

case no later than the first pretrial conference. In no event shall this supersede a trial judge's ability to proceed with a trial on a date certain.
(ii) All parties file with the clerk a written agreement signed by counsel and the parties to submit the case to nonbinding arbitration pursuant to URCADR Rule 102.
(iii) All the parties file with the clerk a written agreement signed by counsel and the parties to submit the case to binding arbitration pursuant to Chapter 31a of Title 78 or the Federal Arbitration Act, 9 USC '' 1 et seq., or as otherwise provided by law.
(B) At the time a complaint is filed, the clerk shall provide to the party filing the complaint a notice stating the requirements and options set forth in the preceding subparagraphs. The notice shall include directions for obtaining a copy of the videotape. The party shall serve a copy of the notice on the other parties.
(C) If no response has been filed under (6)(A)(i), (ii) or (iii) within 30 days after the responsive pleading is filed, the action shall be stayed pending compliance with URCADR rules applicable to mediation.
(D) If the parties have timely filed an agreement to submit the case to nonbinding arbitration under URCADR Rule 102, the court shall issue an order staying the action and all discovery under the Utah Rules of Civil Procedure, except that discovery may continue under URCADR Rule 102(e). All subsequent proceedings shall be conducted in accordance with URCADR Rule 102 and such timetable as the court may establish to ensure the arbitration is instituted and completed without undue delay or expense. All timelines shall be tolled during the pendency of the ADR proceedings, and the timelines shall resume upon notification to the court of the final conclusion of ADR proceedings.
(7) At any time:
(A) the court, on its own motion, may refer the action or any issues therein to the ADR program.
(B) upon its own motion, or for good cause shown upon motion by a party, the court may order that an action that has been referred to the ADR program be withdrawn from the ADR program and restored to the trial calendar.
(C) a party, believing that continuing in mediation is no longer productive, may terminate participation and shall notify the other party and mediator.
(8) If a party unilaterally terminates a nonbinding arbitration procedure after the hearing has begun, that party shall be responsible for all of the ADR provider's fee, and any other party may move that the court also award reasonable attorney fees against the terminating party unless the terminating party shows good cause for the termination.
(9) The judge to whom an action is assigned shall retain full authority to supervise the action consistent with the Utah Rules of Civil Procedure and these rules.
(10) Notice requirements.
(A) Any time the parties determine to use mediation or arbitration in the resolution of the case, the plaintiff shall notify the court and specify the expected date for completion of the ADR process.
(B) Upon conclusion of an ADR process, the plaintiff shall notify the court of the outcome of the ADR process on a form provided by the court.
(11) Selection of ADR provider(s).
(A) Upon referral of a case or any issues therein to the ADR program, the Director shall provide the parties with a copy of the roster, and the parties shall choose the ADR provider(s) for the case. If mediation is the selected ADR process, one mediator shall be

selected. If arbitration is the selected ADR process, one arbitrator shall be selected, unless the parties stipulate to or the court orders the use of a panel of three arbitrators. If a panel is used, the Director shall, from the panel selected, designate a chair who shall preside at all arbitration proceedings.
(B) The parties may select:
(i) An ADR provider from the roster; or
(ii) An ADR provider pro tempore having specialized skill, training, or experience in relevant subject matter. Pro tempore providers must agree in writing to comply with this rule and the URCADR.
(C) If the parties are unable to select a provider within 15 days of referral of the case to the ADR program, the parties shall return the list to the Director with the names of up to half of the members of the roster stricken. If there are more than two parties, each party shall be permitted to strike a proportion of names equal to or less than its proportion of the number of the parties. The Director shall select the provider(s) from among those providers not stricken by any party. If the parties do not return the list within 15 days or express no preference, the Director shall make the selection. The Director shall mail notice of the selection to all parties and the selected ADR provider.
(D) If a party, within 10 days of mailing of the notice of selection, files a written request that the selected provider be disqualified under Canon II of URCADR Rule 104, or if the ADR provider requests to withdraw for good reason from participation in a particular case to which that provider was appointed, the Director shall select another available qualified ADR provider to participate in that case, giving deference to the expressed preferences of the parties, if any, as provided in these rules.
(E) If the parties choose to utilize mediation or non-binding arbitration, the parties shall contact the ADR provider directly for services.
(12) The fees of the ADR provider shall be paid in advance and divided equally between or among the parties unless otherwise provided by the court or agreed by the parties. Any party may petition the court for a waiver of all or part of the fees so allocated on a showing of impecuniosity or other compelling reason. If such waiver is granted, the party shall contact the Director who will appoint a pro bono ADR provider.
(13) An ADR provider acting as a mediator or arbitrator in cases under the ADR program shall be immune from liability to the same extent as judges of this state, except for such sanctions the judge having jurisdiction of the case may impose for a violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.
(14) No ADR provider may be required to testify as to any aspect of an ADR proceeding except as to any claim of violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.
(15) All ADR providers providing services pursuant to the ADR program shall be subject to this rule and the URCADR.
(16) Location of ADR Proceedings. Unless otherwise agreed upon by all the parties, all ADR proceedings shall be held at the office of the ADR provider or such other place designated by the ADR provider.

Rule 4-901. Coordination of cases pending in district court and juvenile court.

Intent:

To require parties to notify the court of multiple cases related to the same family before more than one judge or commissioner.
To permit communication among judges and commissioners assigned to cases related to the same family regarding consolidation and coordination of the cases.
To facilitate coordination of proceedings in cases related to the same family.
Applicability:
This rule shall apply to the district court and the juvenile court.
Statement of the Rule:
(1) Criminal and delinquency cases; Notice to the court.
(A) In a criminal case all parties have a continuing duty to notify the court of a delinquency case pending in juvenile court in which the defendant is a party.
(B) In a delinquency case all parties have a continuing duty to notify the court of a pending criminal or delinquency case in which the respondent is a party.
(C) The notice shall be filed with a party's initial pleading or as soon as practicable after becoming aware of the other pending case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.
(2) Custody, support and parent time cases.
(A) Notice to the court. In a civil case in which child custody, child support or parent time is an issue, all parties have a continuing duty to notify the court:
(i) of a case in which a party or the party's child in the instant case is a party to or the subject of a petition or order involving child custody, child support or parent time;
(ii) of a criminal or delinquency case in which a party or the party's child in the instant case is a defendant or respondent;
(iii) of a protective order case involving a party in the instant case regardless whether a child of the party is involved.

(C) The notice shall be filed with a party's initial pleading or as soon as practicable after becoming aware of the other case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.
(B) Communication among judges and commissioners. The judge or commissioner assigned to a case in which child custody, child support or parent time is an issue may communicate and consult with any other judge or commissioner assigned to any other case involving the same parties or their children. The judges and commissioners may allow the parties to participate in the communication. The objective of the communication is to consider the feasibility of consolidating the cases before one judge or commissioner or of coordinating hearings and orders.
(3) Consolidation of cases. If the parties have not participated in the communication, the parties shall be given notice and the opportunity to present facts and arguments before a decision on consolidation is made.
(A) Within one county and court level. The court on its own motion or motion of a party and upon the agreement of the judges or commissioners assigned to the cases may consolidate the cases within one county and one court level pursuant to §78-3a-115(3), URCP 42, URJP 28 and CJA 4-107.

(B) Between counties in one court level. The court on its own motion or motion of a party and upon the agreement of the judges or commissioners assigned to the cases may transfer cases in different counties of one court level to any county with venue or to any

other county in accordance with §78-13-9.
(C) Between court levels. If the district court and juvenile court have concurrent jurisdiction over cases, either court may transfer a case to the other court upon the agreement of the judges or commissioners assigned to the cases. The district court shall certify to the juvenile court issues of child custody, support and parent time in accordance with §78-3a-105(3) and CJA 4-902.
(4) Judicial reassignment. Within a district and a court level, the court may assign cases from different counties to one judge upon the agreement of the judges or commissioners assigned to the cases. A judge of one court or district may hear and determine a case in another court or district upon assignment in accordance with Rule 3-108(3).
Rule 4-902. Certification of district court cases to juvenile court.
Intent:
To establish a procedure for the district court to certify questions of support, custody or ~~visitation~~ parent-time to the juvenile court.
Applicability:
This rule shall apply to the district and juvenile courts.
Statement of the Rule:
(1) ~~In district court cases where there is a question concerning the support, custody or visitation of a child and a petition concerning abuse, dependency, or neglect of the same child has been filed in juvenile court, the district court shall certify the question of support, custody or visitation to the juvenile court for determination.~~ Pursuant to §78-3a-105(3), the district court shall certify to the juvenile court for determination the question of child custody, support or parent-time regarding a minor who is the subject of a petition pending in juvenile court or over whom the juvenile court has continuing jurisdiction.
~~(2) In other district court cases involving questions of support, custody or visitation, the district court, for good cause shown, upon its own motion or the motion of either party may certify the question of support, custody or visitation to the juvenile court for determination.~~
~~(3) A district court order certifying questions of support, custody or visitation of a child shall state whether the question is certified pursuant to Utah Code Ann. Section 78-3a-105(3) or 78-3a-105(4). When a case is certified pursuant to Section 78-3a-105(4), the certification order shall state the reason or reasons for certification and the question or questions to be determined by the juvenile court.~~
~~(4)~~ (2) When the district court certifies a question~~s of support, custody or visitation~~ to the juvenile court, the clerk of the district court shall transmit the entire case file to the clerk of the juvenile court who shall refer it to the presiding judge for assignment.
~~(5)~~ (3) When the question ~~or questions~~ certified to the juvenile court ~~have~~ has been determined by the juvenile court and the appropriate order entered, the clerk of the juvenile court shall transmit the file to the clerk of the district court, who shall refer it back to the judge assigned to handle the matter.
Rule 11-101. Supreme court's rulemaking process.
Intent:
To establish a procedure for the adoption, modification and repeal of rules of procedure and evidence, and rules governing the practice of law.
Applicability:

This rule shall apply to the judiciary, the Utah State Bar and all other individuals and agencies participating in the rulemaking process.
Statement of the Rule:
(1) Creation and composition of advisory committees.
(A) Statement of authority. Article VIII, Section 4 of the Utah Constitution provides that the Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. Section 4 further provides that the Court may authorize retired justices and judges and judges pro tempore to perform judicial duties. Finally, Section 4 provides that the Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law. To assist the Court with these responsibilities, the Supreme Court hereby establishes a procedure for the adoption, repeal and amendment of rules of procedure and evidence; rules regulating judges pro tempore and retired judges; and rules governing the practice of law.
(B) Establishment of committees. There is hereby established a Supreme Court Advisory Committee in each of the following areas: civil procedure, criminal procedure, juvenile court procedure, appellate procedure, evidence, civil jury instructions, criminal jury instructions and the rules of professional practice.
(C) Composition of committees. The Supreme Court shall determine the size of each committee based upon the workload of the individual committees. The committees should be broadly representative of the legal community and should include practicing lawyers, academicians, and judges. Members should possess expertise within the committee's jurisdiction.
(D) Application and recruitment of committee members. Vacancies on the committees shall be announced in the Utah Bar Journal. The notice shall specify the name of the committee which has the vacancy, a brief description of the committee's responsibilities, the method for submitting an application or letter of interest and the application deadline. Members of the committees or the Supreme Court may solicit applications for membership on the committees. Applications and letters of interest shall be submitted to the Administrative Office of the Courts.
(E) Appointment of committee members and chair. Upon expiration of the application deadline, the Administrative Office of the Courts shall forward all applications and letters of interest to the Supreme Court for consideration. The Supreme Court shall review the applications and letters of interest and appoint those individuals who are best suited to serve on the committee. Members shall be appointed to serve staggered four-year terms. The Chief Justice shall select a chair from among the committee's members. The chair shall be appointed to serve a two-year term and may be appointed to serve additional two-year terms. Judges who serve as members of the committees shall not be selected as chairs.
(F) Vacancies. In the event of a vacancy on a committee due to death, incapacity, resignation or removal, the Court shall appoint a new committee member in accordance with Paragraphs (1)(D) and (E). New members shall be appointed to serve for the remainder of the term to which they are appointed.
(G) Absences. In the event that a committee member fails to attend three committee meetings during a calendar year, the chair shall notify the Supreme Court of those absences and may request that the Court replace that committee member.

(H) Administrative assistance. The Administrative Office of the Courts shall provide staff support to each committee, including the assistance of general counsel in research and drafting and the coordination of secretarial support. The Office of General Counsel shall assign a staff attorney to each committee to provide research and drafting assistance and to coordinate the publication activities of the committee.
(I) Recording secretaries. The Office of General Counsel may appoint a third-year law student or member of the Bar in good standing to serve as a recording secretary for each committee. The recording secretary shall be appointed to serve a one-year term. The recording secretary, under the general supervision of the staff attorney, shall attend and take minutes at committee meetings, provide research and drafting assistance to committee members and perform other assignments as requested by the chair. Recording secretaries shall be paid an honorarium for their services.
(2) Responsibility of advisory committees.
(A) Petitions. Petitions for the adoption, repeal or amendment of a rule of procedure or evidence or a rule governing the practice of law may be filed by any interested individual with the Utah Supreme Court's Advisory Committees, Administrative Office of the Courts, 450 South State St., P.O. Box 140241, Salt Lake City, Utah 84114-0241. Petitions shall be in writing, shall set forth the proposed rule or amendment or the text of the rule proposed for repeal, and shall specify the need for and anticipated effect of the proposal.
(B) Committee agenda. The Office of General Counsel shall forward all petitions filed with the Supreme Court's Advisory Committees to the chair of the appropriate committee. All petitions shall be placed on the committee's agenda for consideration and the committee shall provide written notification of committee action to all individuals who file a petition.
(C) Committee work. Committees shall meet as a whole, at the direction of the chair, to discuss and vote upon individual and subcommittee recommendations and to prepare written recommendations to the Supreme Court concerning petitions or committee-initiated proposals. Minutes shall be taken at all meetings of the committee of the whole and shall be forwarded to the committee's Supreme Court liaison.
(3) Public comment.
(A) Submission of final recommendations. Each committee shall vote upon and finalize its recommendations and proposed committee notes for public comment and submit its final recommendations to the Administrative Office of the Courts for publication and distribution.
(B) Publication. The Administrative Office of the Courts shall publish the final recommendations of each committee and any proposed committee notes for a 45-day comment period. The comment period will run from the expected publication date of the law reporter service in which the rules will appear. The purpose of the comment period shall be to solicit written or oral comment concerning the committees' recommendations and to request input on the committees' agenda.
(C) Distribution.
(i) Copies of proposed rules and any advisory committee comments shall be distributed to the Governor, chairs of the Judicial Rules Review Committee, the director of the Office of Legislative Research and General Counsel, the Executive Director of the Commission on Criminal and Juvenile Justice, the chair of each Advisory Committee, the Executive

Director of the Utah State Bar, Chief Disciplinary Counsel of the Office of Attorney Discipline, all judges, and, upon request, any other person.
(ii) Copies of proposed rules and any advisory committee comments shall be distributed to at least two regularly published law reporter services.
(iii) At the Advisory Committees' discretion, copies of a proposed rule may be distributed to identified group(s).
(iv) Notice of proposed changes shall be mailed to each active member of the Utah State Bar. The notice shall include a summary of the proposed changes and identify where the full text of proposed rules and any advisory committee comments are available.
(v) All information provided by this paragraph (C) shall include the deadline for public comment and to whom public comment should be sent.
(D) Comment. The committees have the discretion to limit public comment to oral or written comment. Written comment shall be submitted to the Administrative Office of the Courts. Oral comment shall be scheduled for hearing at the convenience of the committee during the 45-day comment period.
(E) Request for petitions. During the comment period, the committees shall also request bar members and other interested individuals to file petitions with the Supreme Court's Advisory Committees in accordance with Paragraph (2)(A) for the purpose of identifying issues for committee study.
(F) Committee review. Upon the expiration of the comment period, the Administrative Office shall compile all of the written comment received and forward it to the appropriate committee chair. The chair shall convene a meeting of the committee for the purpose of reviewing the public comment and discussing and voting upon appropriate modifications to the rules.
(G) Transmittal. Once the committee has reviewed the public comment and voted upon the final modifications to the proposed rules and committee notes, it shall submit a letter of transmittal to the Supreme Court with a copy of the committee's final proposals, a summary of the public comment and the committee's recommendations in response to the comment.
(4) Supreme court responsibilities.
(A) Court liaison. The Supreme Court shall designate a representative of the Court to serve as a liaison for each committee.
(B) Committee proposals. The Supreme Court shall consider Committee proposals and adopt, modify or reject those proposals. The Supreme Court shall send a letter of transmittal to each committee chair and the Administrative Office of the Courts notifying the committees of the proposals which were adopted, modified or rejected.
(C) Court-initiated rules. In its discretion, the Supreme Court may adopt rules of procedure or evidence, rules regulating judges pro tempore and retired judges, rules governing the practice of law or modify or repeal those rules upon its own initiative and without proposals by the committees. Court initiated rules shall be published for a 45-day public comment period in accordance with paragraph (2)(D).
(D) Effective date. Rules shall become effective 60 days after adoption by the Supreme Court unless otherwise ordered.
(E) Emergency rulemaking. Notwithstanding the other provisions contained in these rules, if the Supreme Court determines by an affirmative vote of the members of the Court that it is in the best interest of the judiciary to suspend the rulemaking procedures,

the Supreme Court may take final action on a committee or Court-initiated proposal, approve the proposal and provide for an immediate effective date. The Court shall transmit a copy of the approved rule or committee note to each committee chair and the Administrative Office of the Courts. The Administrative Office of the Courts shall publish the rule for a 45-day comment period and submit any comments received during that period to the Court for consideration. The Court may then ratify, amend or repeal the rule.

(F) Publication. All rules adopted by the Supreme Court shall be published in the official publication for Supreme Court Rules.

Rule 11-201. Senior judges.

Intent:

To establish the qualifications, term, authority, appointment and assignment for senior judges and active senior judges.

Applicability:

This rule shall apply to judges of courts of record.

The term "judge" includes justices of the Supreme Court.

Statement of the Rule:

(1) Qualifications.

(A) Senior Judge. To be a senior judge, a judge shall:

(i) have been retained in the last election for which the judge stood for election;

(ii) have voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, shall have recovered from or shall have accommodated that disability;

(iii) demonstrate appropriate ability and character;

(iv) be admitted to the practice of law in Utah, but shall not practice law; and

(v) be eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.

(B) Active Senior Judge. To be an active senior judge, a judge shall:

(i) meet the qualifications of a senior judge;

(ii) be physically and mentally able to perform the duties of judicial office;

(iii) maintain familiarity with current statutes, rules and case law;

(iv) satisfy the education requirements of an active judge;

(v) attend the annual judicial conference;

(vi) accept assignments, subject to being called, at least two days but not more than 60 days per calendar year, except as required to complete an assignment to a case;

(vii) conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court;

(viii) obtain attorney survey results on the final judicial performance evaluation survey conducted prior to termination of service sufficient to have been certified for retention election by the Judicial Council regardless whether the survey was conducted for self improvement or certification;

(ix) continue to meet the requirements for certification for judicial retention election as those requirements are determined by the Judicial Council to be applicable to active senior judges; and

(x) take and subscribe an oath of office to be maintained by the state court administrator.

(2) Disqualifications. To be an active senior judge, a judge:

(A) shall not have been removed from office or involuntarily retired on grounds other than disability;
(B) shall not have been suspended during the judge's final term of office or final six years in office, whichever is greater;
(C) shall not have resigned from office as a result of negotiations with the Judicial Conduct Commission or while a complaint against the applicant was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause; and
(D) shall not have been subject to any order of discipline for conduct as a senior judge.
(3) Term of Office. A senior judge and active senior judge is appointed for three years unless earlier removed by the Supreme Court with or without cause. Upon application, a senior judge and active senior judge may be reappointed. An active senior judge may not serve beyond age 75.
(4) Authority. A senior judge may solemnize marriages. In addition to the authority of a senior judge, an active senior judge, during an assignment, has all the authority of the office of a judge of the court to which the assignment is made.
(5) Application and Appointment.
(A) To be appointed a senior judge or active senior judge a judge shall apply to the Judicial Council and submit relevant information as requested by the Judicial Council.
(B) The applicant shall:
(i) provide the Judicial Council with the record of all orders of discipline entered by the Supreme Court; and
(ii) declare whether at the time of the application there is any complaint against the applicant pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
(C) The Judicial Council may apply to the judicial performance evaluation information the same standards and discretion provided for in Rule 3-111. After considering all information the Judicial Council may certify to the Supreme Court that the applicant meets the qualifications of a senior judge or active senior judge and the Chief Justice may appoint the judge as a senior judge or active senior judge.
(D) Senior judges and active senior judges holding those offices on the effective date of this rule may continue to serve in that capacity until the expiration of the term of appointment and thereafter shall meet the requirements of this rule. Judges who declined, under Rule 3-111, to participate in an attorney survey in anticipation of retirement may use the results of an earlier survey to satisfy Subsection (1)(B)(viii).
(6) Assignment.
(A) With the consent of the active senior judge, the presiding judge may assign an active senior judge to a case or for a specified period of time. An active senior judge may be assigned to any court other than the Supreme Court.
(B) The state court administrator shall provide such assistance to the presiding judge as requested and shall exercise such authority in making assignments as delegated by the presiding judge.
(C) Notice of an assignment made under this rule shall be in writing and maintained by the state court administrator.